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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIRST INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$100,000 (CATEGORY "C" CLAIMS)

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INTRODUCTION

During the early hours of the morning of 2 August 1990, Iraq invaded Kuwait and set into motion the cataclysmic events of the Gulf War. Iraq's invasion and occupation of Kuwait was reversed through an unprecedented international effort conducted under the auspices of the United Nations. In April 1991, shortly after the cease fire, the United Nations Security Council issued resolution 687 (1991)[1], reaffirming Iraq's liability under international law for any direct loss, damage or injury to foreign Governments, nationals and corporations, as a result of its unlawful invasion and occupation. In response to mandates in resolution 687, the Security Council subsequently in resolution 692 (1991)[2] established the United Nations Compensation Commission (the "Commission") to process claims arising from the invasion and occupation and to administer the Compensation Fund (the "Fund") to pay compensation for the claims. The Commission, a subsidiary organ of the Security Council, is composed of a Governing Council consisting of the fifteen members at any given time of the Security Council, a secretariat headed by an Executive Secretary, and Commissioners appointed to review and resolve claims.

This report contains the first recommendations to the Governing Council of the Panel of Commissioners (the "Panel" or "Commissioners") appointed to review individual claims for damages up to US$ 100,000 ("category "C" claims"), pursuant to Article 37(e) of the Provisional Rules for Claims Procedure (the "Rules")[3]. Category "C" claims are considered to be among the "most urgent claims" for which the Governing Council has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief."[4] This report makes compensation recommendations for the category "C" claims reviewed in the First Instalment of claims submitted to the Panel by the Executive Secretary of the Commission.[5]

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[1] Security Council resolution 687, S/Res/687 (1991) ("resolution 687").

[2] Security Council resolution 692, S/Res/692 (1991) ("resolution 692").

[3] Article 37(e) provides that "[e]ach panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim." Decision 10 (S/AC.26/1992/10). For further discussion of the Rules, see infra, Part II, section A.

[4] See Decision 1, para. 1 (S/AC.26/1991/1).

[5] Rules, Article 32, para. 1. It is anticipated that a number of additional instalments will be necessary in order for the Panel to complete its review of all of the category "C" claims received by the Commission. For further discussion, see infra., Part III, section D.4.a.

By way of providing "reasons for the recommendations,"[6] the report also presents information regarding the Panel's processing approach for category "C" claims.

The First Instalment consists of all claims in category "C" that were filed with the Commission as of 30 September 1992 and that have been found to meet all of the formal requirements set forth in Article 14 of the Rules. In addition, the First Instalment includes claims transferred from category "B"[7] to category "C" pursuant to a request by the Panel of Commissioners dealing with "B" claims.[8] A breakdown of the 2,874 claims in the First Instalment is contained in Part IV, section A infra.

The Panel's claims processing methodologies and criteria have been developed primarily on the basis of the claims in the First Instalment. Where possible, however, the Panel has implemented methods, criteria and techniques that may be applied for the expedited processing of the thousands of category "C" claims that are to follow in subsequent claims instalments. The Panel's goal has been to create a system that will lead to the fair, expeditious and efficient processing of claims. In the development of this processing system, the Panel has sought to take into account the diverse cultural, socio-economic and national backgrounds of the claimants, as well as the practical human dimensions of the suffering that occurred as a result of the invasion and occupation.

As the Panel's first complete description of its work on category "C" claims, this report necessarily is comprehensive and lengthy; future reports covering further instalments are expected to be far more concise. The report is divided into five parts. Part I of the Report provides background on the Commission and category "C" claims. Part II describes the legal framework for category "C" claims, including a review of relevant Security Council resolutions, Governing Council Decisions and the Rules, as well as of certain issues relating to jurisdiction, causation and attributability, evidence, the currency exchange rate and interest. Part III discusses how category "C" claims are processed by the registry unit of the secretariat, analyzed and entered into a computer database by the secretariat's "C" claims unit, and reviewed by the Panel; it also presents general methodology considerations for the mass processing techniques that have been developed for "C" claims . Part IV elaborates upon the claims evaluation and compensation methodology for each of the category "C" claims loss types. Finally, Part V contains the Panel's compensation recommendations for claims in the First Instalment, including the amount recommended to be allocated to each Government for each consolidated claim. Annexes to this report provide, inter alia, a breakdown of the amounts to be awarded to each claimant within each consolidated claim and other relevant data concerning claims in the First Instalment.

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[6] Rules, Article 37(e).

[7] Category "B" claims are claims for the payment of fixed amounts to any person who, as a result of Iraq's unlawful invasion and occupation of Kuwait, suffered serious personal injury, or whose spouse, child or parent died. The category "B" claims are another of the claim categories considered to be among the most urgent claims deserving expedited treatment.

[8] See Decision 20, para. 6 (S/AC.26/Dec. 20 (1994)). The category "B" Panel determined that certain claimants had submitted their claims for "mental pain and anguish" on the wrong claim form: such claims should be submitted in category "C" rather than in category "B". The "B" Panel requested the Executive Secretary to reallocate those claims to category "C". See Recommendations Made by the Panel of Commissioners Concerning Individual Claims For Serious Personal Injury or Death (S/AC.26/1994/1) (the "'B' Recommendations"), at pp. 21-23.

I. BACKGROUND

A. The United Nations Compensation Commission

Security Council resolution 687 provides that Iraq "is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."[9] In that same resolution the Security Council decided to give effect to Iraq's liability within the institutional framework of the United Nations. In this regard, pursuant to resolution 692, and in accordance with Section 1 of the Secretary-General's Report of 2 May 1991 (the "Secretary-General's Report"),[10] the Security Council established the Compensation Fund (the "Fund") to pay compensation for claims, and the Commission to administer the Fund.[11]

The functions of the Commission therefore are twofold: first, the Commission is responsible for administering the Fund, including the determination of the level of Iraq's contribution to it, and the allocation of funds and payment of claims; and second, the Commission is responsible for developing procedures to resolve claims against Iraq in light of the relevant standards and guidelines. In this respect, the Commission "is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims."[12]

1. The Governing Council

The Commission functions under the authority of the Security Council and is a subsidiary organ thereof. Its principal organ is the Governing Council, composed of representatives of the current members of the Security Council. The Governing Council is the policy-making organ of the Commission and, as such, has the responsibility for establishing guidelines on "all policy matters, in particular, those relating to the administration and financing of the Fund, the organization of the work of the Commission and the procedures to be applied to the processing of claims and to the settlement of disputed claims, as well as to the payments to be made from the

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[9] Resolution 687, para. 16.

[10] This Report contained the Secretary-General's plan for the creation of the Commission as a claims processing facility.

[11] Resolution 692, para. 3.

[12] Secretary-General's Report, at 20.

Fund".[13]

The Governing Council conducts its work in accordance with Guidelines adopted on 25 July 1991.[14] The Guidelines provide, inter alia, that the Governing Council will take all decisions by a majority of at least nine of its members, except decisions on the method of ensuring that payments are made to the Fund by Iraq, which are taken by consensus.

2. The Commissioners

The Governing Council is assisted by Commissioners who are experts in fields such as finance, law, accountancy, insurance and environmental damage assessment and who act in their personal capacity. Commissioners are appointed by the Governing Council upon nomination by the Secretary-General on the basis of recommendations by the Executive Secretary[15]. They work in panels of three members to review claims and submit their recommendations to the Governing Council for decision.[16] Each panel is to perform its review and arrive at its decisions independently. To the extent possible and where relevant, however, this Panel has taken into account the considerations and decisions expressed by the "B" Panel.

This Panel for category "C" claims was appointed by the Governing Council on 31 March 1993. The task of the Panel is to examine category "C" claims submitted to the Commission and to make recommendations regarding these claims to the Governing Council.[17]

3. The Secretariat

A secretariat, composed of an Executive Secretary appointed by the Secretary-General after consultation with the Governing Council, and of the necessary staff, has been established to service the Commission. Under the direction of the Executive Secretary, the secretariat carries out tasks assigned to it by the Governing Council. In particular, the secretariat provides services to the Governing Council and to the Commissioners in connection with processing the claims, developing procedures pursuant to the Governing Council's guidelines for evaluating the claims, and compiling such information as may be mandated by the Rules or requested by the

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[13] Id., at 10.

[14] S/22885 (1991).

[15] Rules, Article 18, para. 1.

[16] Rules, Articles 18, 28 and 37-40.

[17] Rules, Article 18, para. 1; and Article 32, para. 1.

Commissioners to assist them in their review of the claims. In addition, the secretariat provides the technical administration of the Fund.

The category "C" claims unit of the secretariat is responsible for processing "C" claims, and has been instrumental in assisting the Panel with technical and legal support, and in organizing and compiling information relevant to evaluating category "C" claims.

B. CATEGORY "C" CLAIMS

1. Urgent Claims

As noted above, category "C" claims are submitted by individuals for damages up to US$100,000 sustained as a result of Iraq's 2 August 1990 unlawful invasion and subsequent occupation of Kuwait. The Governing Council in Decision 1 determined that category "C" claims are "urgent claims," to be accorded priority treatment by the Commission, along with claims in categories "A"[18] and "B". In view of the fact that the Commission is also receiving, and will, eventually, process thousands of claims submitted by corporations, governments and individuals with losses greater than US$100,000, the Panel acknowledges the Governing Council's praiseworthy humanitarian initiative to give priority to these urgent claims of individuals.

2. The Category "C" Claim Form

The category "C" claim form includes eight pages of loss types ranging from the loss of personal property items to personal injury or death of a family member (overlapping in part with category "B" claims) to individual business losses. Within each loss type, claims may be made for a variety of loss elements. Indeed, almost anything connected with the lives, livelihood and possessions of individuals who were in Iraq or Kuwait at the time of the invasion may be the subject of a claim, thus making category "C" claims among the most complicated to be addressed by the Commission. The complexities associated with the processing of "C" claims, requiring the resolution of myriad legal, factual, evidentiary and valuation issues, are compounded by the massive number of claims in this category -- in excess of 415,000.

The "C" claim form provides for the following categories of loss:

C1: Damages arising from departure from Iraq or Kuwait, inability to leave Iraq or Kuwait, a decision not to return to Iraq or Kuwait, hostage taking or other illegal detention;

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[18] Category "A" claims allow individuals or families to claim for fixed amounts for their departure from Iraq or Kuwait during the period of the invasion (2 August 1990 to 2 March 1991). Decision 1, paras. 10-11.

C2: Damages arising from personal injury;

C3: Damages arising from death of [the claimant's] spouse, child or parent;

C4: Personal property losses;

C5: Loss of bank accounts, stocks and other securities;

C6: Loss of income, unpaid salaries or support;

C7: Real property losses;

C8: Individual business losses.

A ninth "catch-all" loss type is included on the summary page of the "C" claim form. For loss types "C1", "C2", "C3" and "C6", claimants may also claim compensation for mental pain and anguish ("MPA"), subject to the standards and limitations set forth in Decisions 3 and 8 of the Governing Council.[19]

Based substantially on the provisions of Decision 1, the "Instructions for Claimants" on the face of the category "C" claim form provide claimants with general guidance regarding the preparation of their claims, specific instructions being included on the relevant page of the claim form. Claimants with damages estimated to exceed US$100,000 may submit a claim for their total damages under category "D"[20], or may claim for the first US$100,000 on the category "C" form and the remainder later on form "D".[21]

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[19] See Decision 3 (S/AC.26/1991/3) and Decision 8 (S/AC.26/1992/8). In Decisions 3 and 8, the Governing Council determined that claims for MPA in the following categories may be compensated, provided that such losses are linked to Iraq's invasion and occupation of Kuwait:

(a) A spouse, child or parent of the individual suffered death;

(b) The individual suffered serious personal injury involving dismemberment, permanent or temporary significant disfigurement, or permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;

(c) The individual suffered a sexual assault or an aggravated assault or torture;

(d) The individual witnessed the intentional infliction of events described in (a), (b) or (c) above on his or her spouse, child or parent;

(e) The individual was taken hostage or illegally detained for more than three days, or for a shorter period in circumstances indicating an imminent threat to his or her life;

(f) On account of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained, the individual was forced to hide for more than three days;

(g) The individual was deprived of all economic resources, such as to threaten seriously his or her survival and that of his or her spouse, children or parents, in cases where assistance from his or her Government or other sources has not been provided.

The covering instructions on the category "C" claim form also direct that "[a]ppropriate evidence will . . . be required documenting the circumstances and the amount of damages claimed," and that compensation will be provided only for "[d]irect losses as a result of Iraq's unlawful invasion and occupation of Kuwait." The instructions specify that documentation proving a claimant's nationality is required and that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of another State." In addition, the instructions provide that "compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered." No compensation will be provided in category "C" claims for the costs of attorneys' fees or other expenses for claims preparation. Finally, it is emphasized that the Commission will be alert to claims for exaggerated amounts that are not substantiated by satisfactory evidence or otherwise justified.

On the "signature and affirmation" page of the category "C" form, claimants must sign the following affirmation: "I hereby affirm that the information in this claim is correct."[22]

3. Category "C" Claims Received by the Commission

As noted above, more than 415,000 category "C" claims are expected to be filed with the Commission. The table in Annex I provides a breakdown by country of the "C" claims received as of 2 August 1994.

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[20] In Decision 7, the Governing Council issued criteria for additional categories of claims, including claims for individual damages above US$100,000 (category "D" claims). (S/AC.26/1991/7/Rev.1).

[21] See also Decision 1, paras. 14 and 15(b).

[22] The Panel notes that there is also an affirmation for family claims, although category "C" normally is intended to provide relief to claims submitted by individuals: "I affirm that I am duly authorized to submit this claim by each family member on whose behalf I am making this claim."

II. LEGAL FRAMEWORK

A. Applicable Law

Regarding the law to be applied by the Panel in its review of category "C" claims, Article 31 of the Rules provides as follows:

> In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law.

Resolution 687 reaffirmed that Iraq was liable, under international law, for direct losses, damages or other injuries as a result of its unlawful invasion and occupation of Kuwait. Iraq's liability under international law for such losses having been reaffirmed by the Security Council, the issues remaining for the Panel are to determine the proper scope of causality -- that is, determining for any particular claim or category of claims whether such loss or losses are a "direct" result of Iraq's invasion and occupation--and to assess the amount of the losses incurred.

The Governing Council, acting under its authority pursuant to Security Council resolutions 687 and 692, has issued a number of decisions, including Decision 1 establishing, inter alia, category "C" claims and Decision 10 promulgating the Rules. These decisions provide the basic substantive framework for the Panel's consideration of the claims. To the extent that the Governing Council, acting pursuant to its mandate, has provided procedures and guidelines addressing the issues before the Panel, the Panel need only apply these in its review of the claims.[23] Recourse to "other relevant rules of international law" may be necessary to the extent that the Panel is unable to resolve an issue before it by referring to such relevant Security Council resolutions and Governing Council Decisions.

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[23] In particular, the Panel found most relevant for its recommendations the following decisions: Criteria for Expedited Processing of Urgent Claims, Decision 1; Personal Injury and Mental Pain and Anguish, Decision 3; Business Losses of Individuals Eligible for Consideration under the Expedited Procedures (S/AC.26/1991/4) ("Decision 4"); Determination of Ceilings for Compensation for Mental Pain and Anguish, Decision 8; Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation (S/AC.26/1992/9) ("Decision 9"); Decision 10 approving the Rules; Claims for Which Established Filing Deadlines are Extended (S/AC.26/1992/12) ("Decision 12"); Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause (S/AC.26/1992/15) ("Decision 15"); and Awards of Interest (S/AC.26/1992/16) ("Decision 16").

Another primary source of guidance for the Panel are the Rules which were issued by the Governing Council in its Decision 10. These procedural Rules establish the framework within which the Panels of Commissioners would operate, define their relationship with the Governing Council and the secretariat, and determine the procedures they would be expected to follow in reviewing claims. Throughout its review of the First Instalment claims, the Panel has been mindful of the requirements of the Rules and has adhered to their letter and intent. This has been particularly true with regard to the necessity of taking into account information and views provided by governments in response to Article 16 Reports,[24] and with respect to the need for determining proper evidentiary standards in review of category "C" claim losses.[25]

B. Expedited Processing

Anticipating that the volume of category "C" claims submitted to the Commission would be quite large, the Governing Council established in Decision 1 a requirement that underlies the methodology for category "C" claims: that claims be processed "on an expedited basis."[26] In line with this, Decision 1 provides that when claims are submitted to the Panel for consideration, it "would be instructed to adopt expedited procedures to process them, such as checking individual claims on a sample basis, with further verification only if circumstances warranted."[27] This language is re-stated in the Rules.[28] With a view towards facilitating the expedited processing of the claims, the Rules establish a 120-day period within which the Commissioners should complete their review of the claims assigned in a particular instalment and to issue their report containing recommendations.[29]

The Rules further provide that Commissioners are to make their recommendations "on the basis of the documents submitted."[30] While the Panel has the discretion to request additional information,[31] in light of the mandate that claims be processed on an expedited basis in conjunction with the requirement that the Panel's review of claims within a particular instalment be completed within 120 days, the Panel considers that it should avoid, except where absolutely necessary, the practice of going back to claimant governments or to claimants for additional information.

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[24] Rules, Article 34 (2).

[25] For the Panel's discussion of evidentiary issues, see infra, Part II, section E.

[26] Decision 1, paras. 8 and para. 14.

[27] Decision 1, para. 8.

[28] Rules, Article 37(b) ("With respect to claims that cannot be completely verified through the computerized database, if the volume of claims is large, the Panel may check individual claims on the basis of a sampling with further verification only as circumstances warrant").

[29] Rules, Articles 37 (c) and (d). The Rules provide also for the possibility that the review of claims will not be completed within the time allotted. Rules, Article 39. This Panel requested and received a two-month extension for resolving the claims of the First Instalment.

[30] Rules, Art. 37(c).

C. Jurisdiction

Several jurisdictional issues are raised by the category "C" claims of the First Instalment. Where relevant to these issues, the Panel has adopted conclusions of the Panel of Commissioners reviewing category "B" claims.[32]

1. Subject Matter Jurisdiction

The subject matter jurisdiction for category "C" claims is defined in Governing Council Decisions 1, 3, 4, 8 and 11. These decisions establish, inter alia, the type of losses that are compensable under category "C". In particular, Decision 1, paragraph 14, provides with respect to category "C" that

> [t]hese payments are available with respect to death or personal injury, or losses of income, support, housing or personal property, or medical expenses or costs of departure, as a result of Iraq's unlawful invasion and occupation of Kuwait. The Commission will give expedited priority consideration to claims for such losses up to [US]$100,000 per person.

Although the losses enumerated in this paragraph do not include claims for MPA, Decision 1, paragraph 6, states that the Governing Council, after receiving expert advice, would consider circumstances in which MPA claims may be admitted. The Council thereafter issued Decision 3, establishing seven categories of compensable MPA claims.[33]

The category "C" claim form, approved by the Governing Council, contains a further elaboration of the particular losses that may be claimed in category "C."[34] The claim form has eight pages of losses, some specifying several different types of losses.

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[31] Rules, Article 36. Additional information can be requested from any source, including experts. However, requests by Commissioners for further written submissions or oral presentations are to be reserved for unusually large or complex cases.

[32] See "B" Recommendations, at pp. 12-23.

[33] For a complete listing of the seven categories of MPA specified in Decision 3, see supra n. 19.

[34] For a listing of the losses appearing on each page of the category "C" claim form, see supra Part I, section B.2.

2. Jurisdictional Period

The language of Decision 1, paragraph 18, suggests that Iraq's liability, generally, is related to events that occurred during the period 2 August 1990 to 2 March 1991. In connection with certain of the losses under category "C", several Governments have stated that generally events giving rise to losses outside of this period are not compensable. In construing the language of Decision 1, the "B" Panel stated:

> The period between 2 August 1990 and 2 March 1991, referred to in Decision 1 of the Governing Council, has considerable significance for the purpose of verification of claims arising from Iraq's invasion and occupation of Kuwait. 2 August 1990 marks the date that Iraq's troops invaded Kuwait. 2 March 1991 is the date upon which the Security Council adopted resolution 686 (1991) which took note of the suspension of combat operations by Kuwaiti forces and the Member States cooperating with Kuwait. Most of the situations generating Iraq's responsibility that are listed in Governing Council Decision 1, para. 18 must have occurred during that period.[35]

In accordance with the "B" Panel's findings, this Panel determines that, in principle, events giving rise to claimants' losses should have occurred between 2 August 1990 and 2 March 1991 to be attributable to Iraq's activities associated with its invasion and occupation of Kuwait. The occurrence of loss, such as a serious personal injury or death, outside that time-frame imposes, in general, an extra burden on a claimant to provide an explanation as to why such loss occurring outside this time-period should be considered a direct result of Iraq's invasion and occupation of Kuwait.[36] This general conclusion of the Panel is subject to the requirements for compensation

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[35] "B" Recommendations, at pp. 12-13.

[36] With respect to claims for personal injury or death of a family member under category "C", the Panel agrees also with the following conclusions of the "B" Panel:

> Several claims were submitted for serious personal injury or death that occurred outside the relevant time period, where the cause of the injury or of the death could indeed be linked to the invasion. For example, in some instances an injury suffered during the period of the invasion and occupation of Kuwait was the cause of a death that occurred after 2 March 1991, or the lack of medical care in Kuwait during that period contributed to a serious personal injury or to a death occurring outside that time frame. The Panel has recommended compensation for such claims if satisfactory evidence of a link of the serious personal injury or death to the invasion or occupation of Kuwait was submitted.
>
> A particular issue arose in this context with respect to claims for losses that occurred outside the relevant time period in connection with mine explosions. The Panel had before it several claims for serious personal injury or death caused by the explosion of mines and other ordnance that occurred after 2 March 1991. According to a United Nations report, there were several million mines

under each of the category "C" losses.[37]

3. Location of Loss

In reviewing the question as to whether the location of the event giving rise to a loss affects the Commission's jurisdiction over a claim, the Panel first considered the wording of resolution 687, which refers to "any direct loss, damage" resulting from Iraq's invasion and occupation of Kuwait, without specifying where such loss or damage should have occurred. The Panel also reviewed relevant Governing Council decisions. Two provisions in paragraph 18 of Decision 1 are pertinent. Subparagraph 18(b) provides that claims for losses resulting from departure, inability to leave or decision not to return during the relevant period must be made in relation to Iraq or Kuwait. Further, subparagraph 18(d) explicitly envisages as a cause of damage the breakdown of civil order in Kuwait or Iraq during the relevant period. The Panel concludes that, subject to the requirements that must be met for a claimant to be eligible for compensation under particular category "C" losses[38], the Commission has jurisdiction over a claim irrespective of where the loss occurred. Therefore, for losses such as a serious personal injury or death of a family member, damage or theft of personal property, loss of employment, or losses in connection with an individual's business, the place of the event is not in itself a basis to determine whether the Commission is competent or not. The Panel finds, however, that where such losses occurred in Iraq or Kuwait, they can more easily be attributable to Iraqi actions, whereas a claim based on an incident occurring outside Kuwait or Iraq needs to be more fully substantiated.

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and other pieces of unexploded ordnance in Kuwait at the end of the occupation. That report stated that 'the most lasting environmental problem facing Kuwait will be that of mines and other unexploded ordnance.' Being aware of the long lasting effects of this problem, the Governing Council, in Decision 12, extended the deadline for the filing of claims for losses and personal injuries resulting from public health and safety risks that occurred after or just prior to the expiration of the established filing deadlines. The Panel interprets this Decision to mean that a claim for serious personal injury or death resulting from a mine explosion should be compensated even if that explosion occurred after 2 March 1991.

[37] For example, the period of 2 August 1990 until 2 March 1991 sets a specific jurisdictional limitation for losses suffered as a result of "departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period." Decision 1, para. 18. For further discussion on this issue see infra, Part IV, section B.1.

[38] Decision 3, for example, provides, with respect to MPA claims for hostage-taking, other illegal detention and forced hiding, that "all references to detention and hiding are understood to mean detention and hiding within Iraq or Kuwait."

In addition, claims for real property losses (on page "C7" of the claim form) raise separate considerations. While there is no jurisdictional proscription against claims for losses to real property located outside of Iraq or Kuwait, the Panel expects that such losses would be relatively rare, and therefore losses on page "C7" would be normally confined to real property located in Iraq or Kuwait. For further discussion, see infra Part IV, section B.7.

4. Eligible Claimants

For category "C" claims, the issues related to the competence of the Commission with respect to individuals can be examined on the basis of Governing Council Decisions 1, 4, 11 and 12, and concern the following groupings: exclusion of claims by Iraqi nationals; claims submitted by or for members of the Allied Coalition Armed Forces; claims submitted for detained or missing persons; family members eligible to submit claims for death and MPA; claims submitted by a third person; and claims submitted for individuals' business losses.

a. Exclusion of Claims by Iraqi Nationals

Decision 1, paragraph 17, provides that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State." The First Instalment of category "C" claims contained no claims submitted by an Iraqi national.[39] Where there was some doubt as to the nationality of the claimant, the Panel checked the identity documents found in the claim, and took into account the affirmations provided by the respective Governments pursuant to Article 14 para.1(c) of the Rules[40].

b. Claims Submitted by Members of the Allied Coalition Armed Forces

Decision 11 provides that "members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq," except under certain specified conditions. The Panel observes that no category "C" claims in the First Instalment have been submitted by members of the Allied Coalition Armed Forces, for loss or injury as a consequence of involvement in Coalition military operations against Iraq.[41]

c. Claims Submitted for Persons Either Detained or Missing

The First Instalment includes category "C" claims filed on behalf of individuals who are asserted to be either still missing or in detention in Iraq. All of these claims were submitted on behalf of Kuwaiti nationals for MPA resulting from hostage-taking or other illegal detention (i.e., on page "C1" of the claim form). The issue presented is whether a claim can be submitted on behalf of an individual who is presumed to be still missing or detained, for the MPA allegedly suffered by that person.

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[39] See also "B" Recommendations, at p. 14.

[40] Article 14, para. 1(c) states that a Government submitting claims must affirm "that, to the best of the information available to it, the claimants are its nationals or residents, and that it has no reason to believe that the information stated in the claims is incorrect."

[41] For a discussion of the "B" Panel's conclusions in regard to this issue, see "B" Recommendations, at pp. 14-15.

In Decision 12, the Governing Council established special procedures for the submission of claims of individuals "who have been detained in Iraq until after or within one year prior to the expiration of the established filing deadlines."[42] The Decision provides that claims "for losses and personal injuries" resulting from such detentions "should be submitted to the Commission within one year of the detainee's release . . . but not later than the time limit to be established pursuant to paragraph 2 of this decision."[43] The Governing Council also foresaw the possibility that these persons may in fact be deceased, in which case, according to the same Decision, the claims "should be submitted to the Commission within one year . . . of the death of the detainee, as legally determined by the detainee's Government, but no later than the time limit to be established pursuant to paragraph 2 of this decision."[44]

In accordance with Decision 12, the Panel concludes that claims submitted by third parties for MPA suffered by individuals alleged to be held in detention by the Government of Iraq may not be considered for compensation at this stage. Claims for the MPA suffered by such detainees -- to be considered "losses" within the meaning of Decision 12 -- should be filed by the detainees within one year of their release. Alternatively, once a detainee's Government has determined that the detainee is deceased, a claim may be submitted at that time together with the appropriate documentation by the decedent's family for his or her death (e.g., on page "C3" of the "C" claim form).

Regarding claims submitted by third parties on behalf of "missing" persons, the Panel also concludes that they may not be considered for compensation at this time. The Panel recommends that a claim be submitted, in accordance with the procedures of Decision 12, once such missing person is determined to be a detainee who was subsequently released or determined by the detainee's Government to be deceased. Finally, in instances where it is determined that a missing person was not a detainee but has died as a direct result of Iraq's invasion and occupation of

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[42] Decision 12, para. 1(b).

[43] Id. Decision 12, paragraph 2 provides:

> When the Executive Secretary determines that the processing of all remaining claims before the panels of Commissioners is likely to take no more than one year to complete, he should so notify the Governing Council. The Governing Council should thereupon establish the final time limit for the submission of claims covered by paras. 1(a) and 1(b) of this decision. The Governing Council should establish the final time limit at its next meeting after receiving such notification and should allow at least three additional months from the date of its decision for the filing of the claims.

[44] Id.

Kuwait, a claim may be submitted by his or her family for his or her death.

d. Family Members Eligible to Submit Death and MPA Claims

Decision 1 provides the basis for a category "C" claimant to claim for the death of a family member.[45] Page "C3" of the claim form, in particular, allows a claim to be filed by a claimant for the death of his or her "spouse, child or parent." Pursuant to Decision 3, a claimant may also submit a claim on the "C2" or "C3" pages of the claim form for MPA for witnessing the intentional infliction of events leading to the serious personal injury or death of a "spouse, child or parent." Additionally, Decision 8 imposes monetary ceilings with respect to the amount of compensation payable for MPA per "family unit."

In reviewing category "C" claims for death and different types of MPA, the Panel noted, similar to the "B" Panel's observation, that claimants and their respective Governments have interpreted differently the definition of "family."

The issue as a whole was raised in the following manner in Article 16 Report Number 4[46]:

> In circumstances where compensation is claimed for death or mental pain and anguish relating to a family member, there is an issue as to whether included in the terms parent, child or spouse are, e.g., adopted children, foster parents, wards, guardians and other legally cognizable family relationships under the laws of various countries. A related issue is whether the age of children, marital status or other factors should affect the eligibility for compensation and/or the ceilings in respect of claims for death or mental pain and anguish relating to a parent, child or spouse.

The Panel considered the comments made on this issue by some Governments, including the Government of Iraq.

The "B" Panel, taking cognizance of the varying interpretations and the responses received from Governments, adopted the following conclusions on the definition of family:

> The first issue that arose with respect to determining what constitutes a family was whether the age of children, marital status, or other factors should affect the eligibility of claimants for compensation. The Panel examined all the available documentation, including the decisions of the Governing Council, the Article 16 Reports and the Government responses to the Article 16 Reports, including that

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[45] Decision 1, para. 14.

[46] Report submitted by the Executive Secretary to the Governing Council in Accordance with Article 16 of the Provisional Rules for Claims Procedure (Report No. 4) (S/AC.26/1993/R.16) ("Article 16 Report").

> of the Government of Iraq, and came to the conclusion that the age of children, marital status or other factors should not affect the eligibility for compensation. The Panel holds that Decision 1 should be applied without any limitation with respect to the age or marital status of the family member.
>
> The second issue that arose with respect to the definition of family was whether the terms "parent" or "child" include adopted children, foster parents, wards, guardians and other legally cognizable family relationships under the laws of various countries. Decision 1 does not contain any further definition of the terms "parent" or "child", and taking into account the comments and views made by Governments in response to this issue as raised in Article 16 Reports, the Panel finds it appropriate, in conformity with general principles of private international law, to apply to each claimant his or her own national law in interpreting these terms. Where national laws accord a claimant legal rights similar to those accorded to a biological parent or child, the claimant will be treated as a biological parent or child for the purposes of the processing of the claims in category "B".
>
> A third issue faced by the Panel was whether, for example, in the event of a man's death, his wife and minor children could claim as a family unit, his adult children could each claim as separate family units, and the deceased's parents could claim as yet a third family unit, to each of which the ceiling of US$10,000 would apply. For the purpose of applying the ceiling, the Panel determines that the word "person" in Decision 1, para. 13, means the deceased in the case of death. Thus the Panel concludes that the "family" is composed of the deceased (whose death is to be compensated), his or her parents, all of his or her children, and his or her spouse. Accordingly, the Panel finds that it is not possible to consider different units inside the family for the purpose of the application of the US$10,000 ceiling to claims in category "B".
>
> However, Decision 1 does not refer to the particular situation where the deceased has more than one legally recognized wife, as is the case in some claims. The Panel, taking into account this particular situation, considers that each wife and the children born from that union constitute a separate family unit for the purpose of applying the US$10,000 ceiling. For instance, if a man had more than one wife, each of the wives and her respective children constitute a separate family and the ceiling of US$10,000 can be applied to each. For the purpose of compensation, the parents of the deceased are considered a part of the family of the deceased as a whole.

In light of the careful consideration given to this issue, the Panel adopts generally the "B" Panel's conclusions on the definition of family, where relevant to category "C" claims. In particular, the Panel concludes that for claims for the death of, or for witnessing the intentional infliction of events leading to the death or injury of, a family member, or for the MPA family ceilings established in Decision 8, the "family unit" is composed, respectively, of the deceased, the injured person or the person who was deprived of all economic resources, that person's parents, all of his or her children, and his or her spouse.[47] Accordingly, the Panel finds that it is not possible to consider different units within this definition of family for the purposes of death claims, MPA claims for witnessing events leading to the death or injury of family members, and the application of relevant ceilings for MPA claims.

e. Claims Submitted by a Third Person

Category "C" claims are claims to be submitted by individuals for their losses resulting directly from Iraq's invasion and occupation of Kuwait. In a few cases, however, claims were submitted by someone other than the person who incurred the loss. For example, the claim may be submitted by a parent, sibling, relative, or even a person not belonging to the family. The Panel holds, as a general rule, and subject to the specific guidelines established by the Governing Council for death and MPA claims, that individuals other than the person incurring the loss himself or herself are not entitled to submit the claim.

As the "B" Panel recognized, however, this rule must be applied taking due account of the circumstances of each particular case.[48] Some persons are to be considered legally entitled to claim on behalf of others, e.g., a parent for a minor child, or any person acting either under a power of attorney received from the person who incurred the loss or pursuant to a court decision. In certain claims, the concept of the family as a unit should be borne in mind. For example, for personal property claims appearing on page "C4," a claimant (usually one of the parents) may claim for all of the possessions of the family members including household furnishings, clothing and personal effects that were lost or destroyed; provided of course that no more than one such claim is made per family. The Panel also considers, in particular, that a third person may be entitled to claim on behalf of an injured person when it has found adequate evidence in the claim that the injured person was in no position to submit a claim him- or herself, and when in addition a sufficient link exists between the two (e.g., parent and adult child, husband and wife).

f. Eligibility to Submit Claims for Individual Business Losses

The Governing Council in Decision 1 indicated that business losses of individuals may be submitted under category "C."[49] In Decision 4 the Council indicated the categories of claimants who are eligible to file a "C" claim for their business losses and those who should file their claim in a different claims category. Further discussion of the eligibility constraints for submitting a category "C" claim for individual business losses are discussed in Part IV, section B.8, infra.

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[47] Of course, it follows from this definition of family that claims put forward by other relatives such as brothers or sisters, grandchildren, grandparents, nieces, nephews or uncles and aunts of the deceased or injured person would be excluded.

[48] "B" Recommendations, at pp. 19-20.

[49] Decision 1, para. 5.

D. Causation and Attributability

Resolution 687 sets forth the requirement that a claimant's losses must have been caused by Iraq's invasion and occupation of Kuwait. It states that Iraq,

> without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait. Compensation will not be provided for losses suffered as a result of the trade embargo and related measures.[50]

While this provision is relatively broad regarding the types of losses and parties who are eligible to claim compensation, it contains a significant limitation on Iraq's liability to compensate only for "direct" loss, damage or other injury. Much of the substantive focus of the Panel, concerning the review of claims in category "C", has been to distinguish between direct (and therefore compensable) as compared to indirect (and non-compensable) losses.

In Decision 1, paragraph 18, the Governing Council provided guidance as to the circumstances considered to be directly linked to Iraq's invasion and occupation of Kuwait and to have caused such losses. They include:

(a) military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) the breakdown of civil order in Kuwait or Iraq during that period; or

(e) hostage-taking or other illegal detention.

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[50] Resolution 687, para. 16.

In Decision 15[51], paragraph 6, the Governing Council stated that the above "guidelines are not intended to be exhaustive," and that "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait."[52]

As discussed above, the "C" claim form approved by the Governing Council contains eight pages of loss types that may be considered "direct" losses if they were the result of one of the above, or similar, circumstances.[53] In Decisions 3 and 8, the Governing Council determined that claims for MPA in connection with certain situations may be considered direct losses if they are linked to Iraq's invasion and occupation of Kuwait.[54] Decision 4 contains examples of circumstances under which business losses of individuals may be considered direct losses.[55] Furthermore, Decision 12 recognizes that claims brought by individuals for losses and injuries "resulting from public health and safety risks" may be considered direct losses.[56]

On the other hand, Decision 1 makes clear that "[c]ompensation will not be provided for losses suffered as a result of the trade embargo and related measures."[57] Further guidance concerning the interpretation and application of this Decision is provided by the Governing Council in Decisions 9[58] and 15. Decision 15 explains that "[a]lthough the UN trade embargo was imposed in response to Iraq's invasion and occupation of Kuwait, losses suffered solely as a result of that embargo are not considered eligible for compensation because the causal link between the invasion and the loss is not sufficiently direct."[59]

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[51] Decision 15.

[52] Decision 15, para. 3, re-emphasizes that there are two essential elements to admissible losses: "such losses must be the result of Iraq's unlawful invasion and occupation of Kuwait" and "the causal link must be direct."

[53] For a listing of the losses on the category "C" claim form, see supra Part I, section B.2.

[54] For a listing of the MPA categories on the category "C" claim form, see supra n. 19.

[55] Decision 4, in relevant part, elaborates the following examples:

> "(g) Preventing access, removal, looting and destruction are examples of circumstances under which business losses may have occurred.
>
> (h) Premises, equipment and stock are examples of business property whose loss may be claimed.
>
> (i) Damage to intangible assets, lost business revenues and losses in connection with contracts may only be claimed if they are a direct loss resulting from Iraq's invasion and occupation of Kuwait."

[56] This provision is a reference to losses and injuries caused by the explosion of mines and other ordnance.

[57] Decision 1, para. 16.

[58] Decision 9.

In addition to the guidance provided by the Governing Council in its Decisions, regarding whether a particular loss should be considered "direct", the Panel has taken into account relevant rules and principles of international law. The Panel notes that while "[t]he rules of state responsibility offer little clear guidance on the criteria of direct loss,"[60] one authority has summarized relevant jurisprudence with the statement that "in the majority of cases, in which the epithets 'direct' and 'indirect' are applied to describe the consequences of an unlawful act, they are in fact being used synonymously with 'proximate' and 'remote.'"[61] Accordingly, the most commonly used test in damage claims is whether the act of a State was the "proximate cause" of the loss suffered, or whether that act was too remote to create liability.[62]

While these rules may appear simple, the Panel has found that the difficulty lies in the determination of whether a particular loss falls within the classification of a "direct" loss for which Iraq is liable. Further, the Panel recognizes, as the Governing Council must have when formulating and issuing certain of its Decisions, that considerations of logic, fairness and equity must enter into this determination. In this regard, the Panel, when determining direct loss and causation for particular loss types, has borne in mind the general mandate for urgent claims such as category "C" that expedited procedures be adopted so that quick and effective justice may be rendered. This mandate, underlying the Panel's decision to develop a mass claims processing system for category "C", has influenced the Panel to make certain general presumptions regarding causation and attributability where deemed appropriate given the legal and factual circumstances of the particular loss type.

Further discussion of these and other principles relevant to causation and attribution is provided in Part V, section B, infra, presenting the Panel's consideration of particular category "C" losses and corresponding processing methodologies.

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[59] Decision 15, para. 3.

[60] H. Fox, "Reparations and State Responsibility: Claims Against Iraq Arising Out of the Invasion and Occupation of Kuwait, in: The Gulf War 1990-91," *International and English Law*, 261, p. 275 (P. Rowe, ed., 1993).

[61] B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, p. 243 (reprint 1987).

[62] E. Riedel, Damages, in *Encyclopedia of Public International Law*, 68, p. 70 (R. Bernhardt, ed., 1987).

E. Evidentiary Standard for "C" Claims

1. General Standard

The general evidentiary standard applicable to "C" claims is stated in Decision 1, and more specifically in Article 35 of the Rules. Article 35 imposes the evidentiary requirement that:

> Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted.
>
> With respect to "C" claims, Article 35(c) of the Rules provides that the claims must be documented by appropriate evidence of the circumstances and amount of the claimed loss. Documents and other evidence required will be the reasonable minimum that is appropriate under the particular circumstances of the case. A lesser degree of documentary evidence ordinarily will be sufficient for smaller claims such as those below US$ 20,000.[63]

Thus, evidence must be provided regarding the circumstances surrounding the claimant's loss (i.e., to demonstrate that the loss was a direct consequence of Iraq's invasion and occupation of Kuwait) and the actual amount of the loss. The documents and other evidence, however, need only be the "reasonable minimum" that is "appropriate under the particular circumstances of the case." In any case, a lesser quantum of evidence is required for claims that are for smaller amounts.[64]

2. Considerations

One of the principal tasks of the Panel in its review of the First Instalment of category "C" claims has been to give specific effect to the evidentiary standards established by the Governing Council in Decision 1 and Article 35 of the Rules. In determining what evidence in support of the particular losses on the "C" claim may be considered the "reasonable minimum" that is "appropriate under the particular circumstances of the case," the Panel has taken into account a number of factors. In particular, the Panel has taken into account the different types of evidence submitted by claimants in support of their losses and background information concerning the availability, relevance and validity of such evidence in the context of the circumstances surrounding the invasion and occupation of Kuwait. Specific attention is given to the admissibility, relevance, materiality and weight of the evidence provided in relation to particular category "C" losses in Part IV, section B, infra, presenting the Panel's evaluation of and approach for each "C" loss.

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[63] This standard tracks the language of Decision 1, paragraph 15, providing that category "C" claims

> must be documented by appropriate evidence of the circumstances and the amount of the claimed loss. The evidence required will be the reasonable minimum that is appropriate under the circumstances involved, and a lesser degree of documentary evidence would ordinarily be required for smaller claims, such as those below $20,000.

[64] Thus, there is a gradation in the requirement of evidence for category "C" claim losses, in relation to the amount claimed. The Governing Council, in Decisions 1 and 7, established further gradations in the evidentiary requirements for different categories of claims, setting more relaxed standards for claims in categories "A", "B" and "C" (urgent claims) than for claims in categories "D," "E" and "F."

a. Analysis of the Principal Types of Evidentiary Items

Typically, the following types of evidentiary items are offered by claimants in the First Instalment in support of their losses:

1) The Claim Form

The "Instructions for Claimants" on the face of the category "C" claim form state, inter alia, that "[a]ppropriate evidence will . . . be required documenting the circumstances and the amount of damages claimed." In addition, the individual pages of the claim form request evidence from the claimant in support of the particular losses alleged, in some cases requesting specific items of evidence.

On the basis of its review of the claims in this First Instalment, and in light of relevant background information and patterns observable in the claims, the Panel finds that a properly completed claim form itself constitutes an essential statement by the claimant. Such a form not only contains identifying information and sets forth the particular losses being claimed, but also includes personal descriptions of losses. Significantly, the claim form also contains a signed affirmation by the claimant that the information in the claim is correct[65]. In this regard, it is notable that certain countries have generally informed their claimant-nationals submitting category "C" claims that a false statement on the claim form might subject the claimant to civil and/or criminal penalties.

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[65] In this connection, the governments have also provided the following affirmation: "to the best of the information available to [the government], the claimants are its nationals or residents and that it has no reason to believe that the information stated in the claims is incorrect." Rules, Article 14 (c).

2) Identification Documents

The category "C" claim instructs the claimant to submit documentation proving his or her nationality, such as a photocopy of a passport or national identity card. The claim form provides space for the claimant to indicate his or her passport number, national identity card number, civil identification number issued by the Kuwaiti authorities, or residency permit number issued by the Iraqi authorities. For claims for death of a family member, the claim form requests the claimant to provide the deceased's full name and official identification number, as well as copies of marriage documents, birth certificates or other official documents to establish the family relationship, and copies of death or burial certificates to establish the fact of the death.

Different evidentiary items were provided by claimants as proof of identity. In addition to the information on the claim form, claimants usually submitted a copy of their passports, Kuwaiti civil identification cards, their family registration records, or travel documents that were issued by the relevant authorities to allow them to leave Kuwait or Iraq after the invasion. The same documents were often submitted for all family members, including, if relevant, a deceased or injured family member. Claimants' passports often contained visas or residence permits indicating that the claimant had been a resident of Kuwait or Iraq, or exit stamps from the Iraqi authorities indicating that the claimant had departed from Kuwait or Iraq during the relevant time period. In claims for death, a death declaration or death certificate attested to the identity of the deceased. In addition, a number of claimants provided the passport number, Kuwaiti civil identification number, or Iraqi residency permit number of the deceased on the claim form.

In their entirety, the category "C" claims of the First Instalment contained thorough, relevant and reliable evidence of identification for the claimant and/or family members[66]. The Panel finds, in particular, that a number of documents submitted not only establish the identity of the claimant, but also the fact of that claimant's presence in Iraq or Kuwait prior to, or during, the invasion.[67] In light of the above considerations, the Panel considers the documentation submitted to constitute sufficient evidence of the identity of the claimant or the deceased or injured family member. The issue of the proof of family relationship between the claimant and a deceased family member, or between the claimant claiming under certain MPA categories and an injured family member, is discussed in more detail in Part IV, sections B.2 and B.3, infra.

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[66] In this regard, the Panel also took into account the affirmations provided by governments. See supra, n. 65.

[67] Information provided such as civil identification numbers issued by Kuwaiti authorities, or residency permit numbers issued by Iraqi authorities, lend themselves to further verification of the claimant's identity and presence in one of these two countries prior to, or during, the invasion.

3) Personal Statements

The vast majority of claimants in the First Instalment have supported their claims for losses with a personal statement. The statements usually explain what happened to the claimant as the invasion commenced (e.g., the claimant explains that he or she departed from Iraq or Kuwait, following a particular route, or remained under certain conditions), and the circumstances and amount of the losses incurred. The Panel found that the evidentiary weight to be given to such claimant statements should vary in relation to the particular loss for which the statement is submitted. This is in accordance with the evidentiary standard for category "C" that the "evidence required will be the reasonable minimum that is appropriate under the circumstances involved."[68]

Thus, in the context of certain losses, for example, claims for MPA resulting from forced hiding, a claimant statement may be the best available evidence to indicate where, why and under what circumstances that person was hiding. The explanations and descriptions in such statements would add further to an assessment of the relevance, weight and credibility to be given to the statement, particularly when read in light of relevant background information. On the other hand, a personal statement provided in support of a claim for damages to real property, while relevant, may not be considered sufficient to establish the ownership of the property or the amount of the losses involved.

4) Witness Statements

A large number of claimants have submitted statements by witnesses in support of their losses. The witness statement may be either a document independently prepared by the witness, or the assertions contained in the claimant's statement may have been attested to by one or two witnesses. In a significant number of cases the witness statement is provided by one or several of the claimant's relatives. The Panel considers that the evidentiary weight to be given, in particular, to witness statements may be analyzed and determined in light of: (i) the relationship of the witness to the person incurring the loss, bearing in mind that under hostile conditions and circumstances involving urgency, the only available witness may be a person related to the victim; and (ii) general evidentiary principles relating to the quality and relevance of a witness statement, such as whether the statement indicates the bases for the witness' testimony (e.g., time, place, first hand knowledge of the events).

5) Other Documentary Evidence

The Panel observed that a diverse array of documentary evidence has been submitted by claimants in support of their category "C" losses. Such evidence includes items such as receipts and invoices; contracts; official government documents; birth, marriage or death certificates, or similar documents prepared by an official entity; bank and real property records; letters from relevant professionals including doctors, insurance loss adjusters and former employers; photographs; and newspaper articles. The Panel considers that such evidence generally is very probative of the losses claimed.

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[68] Decision 1, para. 15.

b. General Considerations for Assessing the Admissibility, Relevance, Materiality and Weight of the Evidentiary Items Submitted

In general, the admissibility, relevance, materiality and weight of the different types of evidence described above and submitted by claimants in support of the various category "C" losses may be considered in light of the following factors. Particular circumstances or considerations relevant to assessing the evidence for certain losses are discussed below in the sections addressing those losses.[69]

1) Circumstances in Kuwait and Iraq During the Invasion and Occupation

The circumstances in which the claimants' losses occurred, specifically those in Iraq or Kuwait, may have had a significant impact on claimants' abilities to provide evidence in support of their claims. Thus, for example, consideration was given to the general emergency conditions prevailing in Kuwait and Iraq under which many thousands of individuals were forced to flee or hide or were held captive, without safely securing their possessions or retaining documents that later could be used to substantiate their losses. In addition, consideration was given to the fact that many claimants could not return to Iraq or Kuwait, or chose not to return, and therefore, had difficulty producing primary evidence of their losses. The invasion took place at the height of the Gulf summer. Accordingly, many persons were outside of Kuwait and Iraq on vacation, and would have had no reason to take documentation relevant to establishing their claim with them. Further, the looting, vandalism and destruction of property was extensive. Many homes were gutted or left in complete disarray. Thus, some or all of the documents and other items that could be used to substantiate a claim may have been looted or destroyed, or lost subsequently during efforts to clean-up the damage and debris. In general, the Panel finds that such background information provides secondary or circumstantial support for the claims and the allegations contained in claimant statements or attached documentation.

2) Claimant Circumstances and Characteristics

The Panel considered, to the extent available and relevant, the socio-economic characteristics and invasion-related circumstances of claimants from different countries, specifically in relation to their ability to provide evidence in support of their claims. Article 35 of the Rules states that the "[d]ocuments and other evidence required will be the reasonable minimum that is appropriate under the particular circumstances of the case." (Emphasis added). The claims themselves reveal a distinct difference in the quality, patterns, relevance and materiality of the evidence submitted by claimants from different countries, and within countries, by education and income-level.[70] Thus, consideration was given to the impact that the invasion and the ensuing hostilities had on claimants from particular countries. Further particular socio-economic characteristics such as the education and income level of claimants from different countries and backgrounds were considered. As another important factor, any common factual patterns observable from the claims were considered by the Panel in assessing the relevance, weight and credibility of assertions made in individual claims. Such information and factors have been relied upon to explain particular patterns of evidence, and to assess the weight to be accorded to particular evidentiary items. Again, the Panel finds that such background information and factors provide secondary or circumstantial support for the claims and the allegations contained in claimant or witness statements or attached documentation.

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[69] See Part IV, section B, infra.

3) Transactional Practices in Iraq and Kuwait

The day-to-day business and retail sales practices in Iraq and Kuwait are usually conducted in cash rather than using cheques and/or credit cards. The informal climate for these practices is deeply rooted in the local culture. Businesses and individuals do not often keep receipts, sales slips or financial records. The absence of such documents in support of daily transactions had been considered by the Panel as relevant background for determining the appropriate evidence in support of particular losses.

4) National Claims Programme

To the extent information was available, a description of the respective national claims programme of the various claimant governments, discussing such considerations as whether the claimants received guidance in completing their claim forms, was considered by the Panel.[71]

In determining what effect to give to a national claims programme in the context of evaluating the evidence submitted with a claim or group of claims, inter alia, the following factors have been considered:

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[70] For a discussion of the presentation of the claims, see infra, Part III, section D.3.

[71] For further discussion of background on national claims programmes, see infra, n. 113 and accompanying text.

(i) Whether claimants were required to complete their claim form at an officially designated location (e.g., national claims programme central or local office) or under the supervision of, or with assistance from, a national claims programme official;

(ii) Whether the evidentiary items provided by claimants were reviewed by programme officials;

(iii) The policies, procedures and standards employed by programme officials in screening, modifying or validating claims (e.g., whether programme officials requested additional information or evidence from claimants in support of claims, and what types of claims were held back due to deficiencies, and what types of deficiencies resulted in claims being held back);

(iv) The policies and procedures implemented by the national claims programme in connection with verifying the claims (e.g., the use of investigators or loss adjusters).

5) Other Background Information

The Panel considered other general background information including reports and statistical abstracts compiled by national authorities, international organizations or other independent entities regarding the nature and causes of losses resulting from Iraq's invasion and occupation of Kuwait. Such general background information has been considered as secondary or circumstantial support for the claims and the allegations contained in the claimant or witness statements and attached documentation.

c. Review of International Practice

As the "B" Panel observed, the scarcity of evidentiary support where massive numbers of claims are involved is not a phenomenon without precedent in international claims programmes, in particular if the events generating responsibility have taken place in abnormal circumstances such as those prevailing in Kuwait and Iraq during the conflict.[72] As one authority summarized:

> An analysis of the practice of international tribunals regarding issues of evidence shows that tribunals often had to decide claims on the basis of meagre or incomplete evidence. It has been observed that the lowering of the levels of the evidence required occurs especially 'in the case of claims commissions, which have to deal with complex questions of fact relating to the claims of hundreds or even

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[72] "B" Panel Recommendations, at p. 34.

thousands of individuals.'[73]

The Panel finds that this observation is particularly apposite in connection with category "C" claims, in light of the hundreds of thousands of claims to be resolved, the diversity of these claims and the claimant population, as well as the evidentiary considerations and questions of valuation involved.[74]

F. Currency Exchange Rate

Neither the Governing Council's Decisions nor the Rules provide a specific determination as to the currency in which category "C" claims are to be processed and paid, or the exchange rate to be used to convert claims that are not stated in that currency. Nonetheless, it is clear from the Governing Council's specification of category "C" as one for "individual claims for damages up to US$100,000," as well as from the instructions on the claim form and from certain ceilings and fixed-amounts established in Governing Council decisions[75], that the currency for processing and payment is United States dollars.[76]

The issue of the proper currency exchange rate to be used was raised in an Article 16 Report as follows:

> "Many claims in Category 'C' have been put forward in currencies other than U.S. dollars[77], raising the issue of the appropriate currency exchange rates to be applied."

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[73] Sandifer, Durward D., *Evidence Before International Tribunals*, Revised Edition (1975), at p. 22.

[74] A reference in this context may also be made to the Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms (2 July 1993), presented by Theo van Boven, the Special Rapporteur appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights. In discussing certain guidelines concerning reparations to victims of gross violations of human rights, the Study, at para. 137, states: "Administrative or judicial tribunals responsible for affording reparations should take into account that records or other tangible evidence may be limited or unavailable. In the absence of other evidence, reparations should be based on the testimony of victims, family members, medical and mental health professionals."

[75] See, in particular, Decisions 1, 7 and 8.

[76] The decision to process and pay claims by reference to the dollar may have been guided mainly by two considerations of a practical nature. First, for mass claims processing purposes, it may be more efficient to convert all amounts involved into a single currency. Second, the Fund, created by paragraph 18 of Security Council resolution 687, from which successful claims are to be paid, is expected to receive most of its income in dollars.

[77] The issue also applies to claims put forward in dollars on the basis of conversion by the claimants themselves of other currencies at rates different from that applied by the Commission.

Several Governments contributed views in connection with this issue, and the Panel has carefully considered the responses submitted.

The Panel took into account a number of different considerations in reaching a decision on this issue. The consequence of conversion into another currency, combined with the time lag between the date on which a claimant's losses may have occurred and the date of compensation, is that any fluctuation against the payment currency of the currency in which the claim is stated, may affect the relative value of the compensation.

Generally, three criteria are recognized to determine the proper rate of conversion. The first is the date on which the loss was incurred. In contractual cases, that is usually the date of breach; in cases of tort, it is usually the date on which the tortious act was committed. The second is the date on which the judgment is rendered. The third is the date on which payment under the judgment is made.

In its review of relevant law on the subject, the Panel has observed that, normally, the object of a civil money judgment is to restore an injured party to a position as close as possible to that in which he or she would have been had the injury not occurred. Interpreting this principle in the context of currency conversions, such conversions are to be made at a rate so as to make the injured party whole and to avoid a windfall to the wrongdoer.[78] International practice reflects that the date of the loss is often considered best to fulfil these aims. "Normally the value of a claim is computed in the foreign currency at the time of loss or damage and then converted into the currency of the claimant's country using the rate of exchange available at the time the claim arose."[79]

The Panel considers that while the method to be applied should be within the general parameters of international precedent, practical processing considerations limit the options available for category "C" claims. More than 400,000 "C" claims are expected to be filed with the Commission. This fact alone has an important bearing on the processing methodology to be adopted; all the more so considering the Commission's mandate to treat these claims on an expedited basis. This argument gains in strength when considered in light of the following considerations.

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[78] Often, it is considered that the date used for conversion should depend on whether the currency of the loss has appreciated or depreciated relative to the currency of payment. In general, if the currency of the loss has depreciated since the injury or breach, judgment should be given at the rate of exchange applicable on the date of injury or breach; if the currency of the loss has appreciated since the injury or breach, judgment should be given at the rate of exchange applicable on the date of judgment or the date of payment. Alternatively, one could summarize that the conversion should be made at whichever date would serve the ends of justice under the circumstances. See Gold, Joseph, *The Restatement of the Foreign Relations Law of the United States (Revised) and International Monetary Law*, The *International Lawyer*, Vol. 22, no. 1 (1988), p. 25.

[79] Lillich, Richard B., *International Claims: Postwar British Practice*, p. 127.

In many cases it is difficult to determine the date on which the claim has arisen. In this connection, the Panel has noted that the "C" claim form does not specifically invite this information; the record often is incomplete or ambiguous. Moreover, claimants frequently seek compensation under more than one loss category (i.e., losses on pages "C1" through "C8"), with different dates applying to different losses claimed[80]. For example, a claimant may claim for the loss of his job in August 1990, for damage inflicted on his house in September 1990, and for an injury sustained in the following month. Even within a single loss category, a claim may be composed of several elements that took place on different dates. For example, a claim for loss of personal property on the "C4" page may be based on the theft of a car on one date and the looting of personal effects on another. In many cases, damages are incurred over a period of time, rather than on one specific date. For example, an injury may require long-term treatment, with expenses stretching over time. A related aspect is that compensable damages may arise even after the date on which the claim has been submitted.

Taken in aggregate and viewed against the background of the claims load involved, the foregoing factors demand a conversion standard that is simple rather than subtle, practical rather than theoretical, and mass-oriented rather than aimed at individual particulars. The Panel finds that the most realistic and efficient method, and one that appears not generally unfair, is to determine the exchange rate by reference to one fixed date.[81] Moreover, good arguments exist to use the pre-invasion date of 1 August 1990 as the fixed date.

The most relevant argument in support of the use of this date is that, in the absence of detailed data showing the patterns for different types of "C" claim losses, the majority of those claims should perhaps be presumed to have arisen in the period directly following the invasion, rather than at a later date. Many claimants immediately lost their jobs, for example, and a significant amount of departure costs were incurred around that time. The disturbance of the exchange rate for the Kuwaiti dinar caused by Iraq's actions appears to leave no alternative but to process dinar claims by reference to the last available rate before the invasion. The fact that a relatively high percentage of claims[82] has been stated in that currency argues in favor of the application of that method to all claims filed. It is further noted that much of the information on which the claims and the Commission's assessment thereof are based relates to values calculated as of 1 August 1990. For example, the "C5" page asks the claimant to indicate the value of stocks and other securities, not as of the "date on which the loss occurred," but "on 1 Aug. 90;" the "C6" page requests the claimant to specify the "salary prior to 2 August 1990;" and the "C7" page regarding real property provides for information on the "estimated value as of 1 August 1990."

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[80] The possibility that those claims may relate to damages incurred in different currencies introduces yet another variable.

[81] Apart from the practical arguments explained, there is ample precedent within the Commission's processing system for the use of a method that implies a certain level of abstraction. Consider, for example, the Governing Council's determination of fixed sums and ceiling amounts.

[82] Not only those filed by Kuwaiti nationals, but also those filed by claimants of all other nationalities.

A final consideration of a legal nature is that, ultimately, all compensable damages may be deemed to have been caused by Iraq's unlawful invasion of Kuwait which commenced on 2 August 1990.

Accordingly, the Panel determines that the currency exchange rate to be applied for the purposes of processing and paying category "C" claims is as follows:

1. Claims Stated in Kuwaiti Dinars

For claims stated, in whole or in part, in Kuwaiti dinars, the currency exchange rate to be applied is the rate of exchange in effect on 1 August 1990 for converting Kuwaiti dinars to United States dollars.

2. Claims Stated in Other Currencies

The Panel notes that daily currency exchange rate data are not available for a number of currencies in which category "C" losses are stated. Therefore, for claims stated, in whole or in part, in currencies other than the United States dollar or the Kuwaiti dinar, the currency exchange rate to be applied is the average rate in effect for the month of August 1990 for converting the particular currency or currencies to United States dollars.

G. Interest

Regarding the payment of interest, the Governing Council in Decision 16 has provided that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award."[83] The Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," but postponed deciding what would be the methods of calculating and paying interest.[84]

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[83] Decision 16.

[84] Id., at paras. 2-3.

For reasons similar to those expressed above in connection with the currency exchange rate to be applied, and in particular the number of category "C" claims to be processed and the practical inability to determine the specific date of loss for individual claims, the Panel determines that the phrase "the date the loss occurred" in Decision 16 should be interpreted to be a single fixed date for all category "C" claims. Moreover, the Panel finds that the date of the invasion, 2 August 1990, should serve as the fixed date. This conclusion is supported by the consideration, noted above, that, ultimately, all compensable damages may be deemed to have been caused by Iraq's unlawful invasion of Kuwait which commenced on 2 August 1990.

With this clarification, and bearing in mind the Governing Council's intention to consider remaining issues regarding interest at the appropriate time,[85] the Panel recommends that interest be awarded on the category "C" claims in the First Instalment.

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[85] Id.

III. CATEGORY "C" CLAIMS PROCESSING

A. Registration, Preliminary Assessment and Reporting of Claims

1. Claims Registration

Category "C" claims must be submitted on the standard claim forms prepared and distributed by the Commission.[86] Governments and other authorized persons, authorities and bodies[87] may submit claims on behalf of individuals in the form of consolidated claims. The secretariat's Registry issues a "delivery receipt" for each consolidated claim received.[88] Once the Registry determines that the claims have been submitted by an organization or body authorized to submit claims and within the established time limits, it issues a "filing receipt" signifying that the claims have been duly filed.[89]

2. Article 14 Preliminary Assessment

Having received and filed the claims, the Registry verifies that they meet the formal requirements specified in Article 14, paragraph (1) of the Rules. Governments or authorized entities with claims not meeting these requirements are notified and given 60 days to correct any deficiencies.[90] If the formal requirements are not met within this period, the claims are considered as not filed.[91] All of the category "C" claims included in the First Instalment reviewed by the Panel have met the formal requirements.

3. Article 16 Reporting

Concurrent with the Article 14 preliminary assessment of the claims, the secretariat analyzes the claims for purposes of preparing a report pursuant to Article 16 of the Rules (the

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[86] Rules, Article 6.

[87] In accordance with Decision 1, para. 19, the Governing Council may request an appropriate person, authority or body to submit claims on behalf of persons who are not in a position to have their claims submitted by a Government. For example, the United Nations Development Programme and the United Nations High Commissioner for Refugees have submitted claims on behalf of individuals.

[88] Rules, Article 11(1).

[89] Id., Article 13.

[90] Id., Article 15.

[91] Id.

"Article 16 Report").[92] These reports contain information regarding the claims received during the period covered, and address the significant legal and factual issues raised by the claims. The Article 16 Reports are circulated to the members of the Governing Council, to all Governments that have submitted claims to the Commission, and to the Government of Iraq. The category "C" claims submitted to the Panel in the First Instalment were reported in the First Article 16 Report of the Executive Secretary.[93]

Each of the above mentioned Governments may present to the Executive Secretary, for transmission to the Panel, additional information and views concerning the claims covered in the report, and specifically may respond to the significant legal and factual issues raised therein.[94] In connection with its review of the claims in the First Instalment, the Panel has considered carefully the information and views contained in the responses received from Governments.

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[92] Id., Article 16, para. 1:

> The Executive Secretary will make periodic reports to the Governing Council concerning the claims received. These reports shall be made as frequently as required to inform the Council of the Commission's case load but not less than quarterly. The reports shall indicate:
>
> a) Governments, international organizations or other eligible parties that have submitted claims;
>
> b) the categories of claims submitted;
>
> c) the number of claimants in each consolidated claim;
>
> d) the total amount of compensation sought in each consolidated claim.
>
> In addition, each report may indicate significant legal and factual issues raised by the claims, if any.

As of August 1994, the Executive Secretary has issued eight reports pursuant to Article 16 of the Rules.

[93] The First Instalment consists of those claims that were filed as of September 30, 1992, the last day of the reporting period covered by the first Article 16 Report. It also contains the claims that were transferred from category "B" to "C", see supra n. 8 and accompanying text.

[94] Rules, Article 16, para. 3:

> Within 30 days in the case of claims in Categories A, B and C, . . . , of the circulation of the Executive Secretary's report, the Government of Iraq as well as Governments and international organizations that have submitted claims, may present their additional information and views concerning the report to the Executive Secretary for transmission to panels of Commissioners in accordance with Article 32. There shall be no extensions of the time-limits specified in this paragraph.

B. Claims Input and Preparation

1. Computer Data Entry

Following the issuance of the Article 16 Report, the information on the claim forms and in the attached documentation is reviewed and entered by the secretariat into a computer database for the purposes of tracking, grouping, categorizing and analyzing the claims.[95] The fields in the database were designed in light of the proposed claims evaluation methodology and compensation criteria developed by the secretariat pursuant to the Governing Council's guidelines.

The data capture and input for category "C" claims is performed by trained paralegals under the supervision of the category "C" claim unit's legal staff. Each claim entered into the computer database is assigned a unique "UNCC claim number". This number is used to register and track claims. A computer check is run for each claim to verify that an individual has submitted no more than one claim within category "C".[96] Once relevant information from the claims and related documentation has been input, the computer is used to analyze and group claims that have common legal and factual issues, and to print lists of claims that fall within the specified groups. It is also used to enter the calculated amount of damages for the different losses on the "C" form, as well as the total amount of compensation recommended for each claim.

2. Secretariat's Article 32 Report

In order to assist the Panel in its review of category "C" claims, the secretariat submitted the claims along with a report pursuant to Article 32 of the Rules. The Article 32 report is an internal working document prepared by the secretariat for the use of the Panel.[97] For category "C" claims, this report included background on the Commission; information on claims registration and the preliminary assessment; factual information on Iraq's invasion and occupation of Kuwait and its impact on individuals in Iraq and Kuwait; socio-economic background on the individuals working and residing in Iraq and Kuwait at the time of the invasion; legal and evidentiary considerations; a breakdown of the claims included in the First Instalment; grouping, analysis and other preparation of the claims[98]; and proposed processing methodologies and compensation criteria for each of the loss elements in the "C" claim form.

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[95] The database and data capture system for category "C" claims were designed with the assistance of computer consultants retained by the secretariat for this purpose. The system permits the capture of the factual information from the claims, as well as the evidentiary items submitted in support of particular losses, and also enables the secretariat to group the claims according to the loss elements and issues considered to be relevant to their disposition.

[96] When processing category "A", "B" and "D" claims, the secretariat also runs computer and manual checks to verify whether an individual who is claiming under category "C" has also claimed under one of these other categories. If so, then the appropriate review, determination and deductions, if any, will be made. See infra for further discussion, Part IV, section A.4.

[97] Article 32 of the Rules provides that the Executive Secretary will submit to the Panel the claims "together with the related documentation, containing the results of the preliminary assessment made by the Secretariat and any other information deemed to be useful for the work of the Commissioners, as well as the additional information and views submitted [by Governments or other authorized entities] in accordance with Article 16" of the Rules.

The Panel notes with appreciation that the secretariat's preparation of the Article 32 report, including the compiling of relevant background information, grouping and analysis of the claims and development of proposed processing methodologies, was instrumental to the successful completion of the Panel's review of the claims in the First Instalment.

C. Review of the Claims by the Panel

1. Meetings of the Panel

The Panel held three preparatory meetings with the secretariat from 28 to 29 June and 18 to 19 October 1993, and 10 to 11 January 1994, to discuss the procedures and methodology used by the secretariat to process category "C" claims and to organize the work of its substantive sessions. The Executive Secretary delivered the claims in the First Instalment with the Article 32 report to the Panel on 21 February 1994, along with the information and views submitted by the Governments that have submitted claims and by the Government of Iraq. The Panel commenced its review of the claims at its first substantive session held from 21 to 25 February 1994. Subsequent working sessions were held from 21 to 25 March, 2 to 6 May, 30 May to 3 June, and 29 August to 2 September 1994. All the preparatory meetings and the substantive sessions were held in Geneva at the headquarters of the secretariat and were conducted in private.[99]

2. Review of Claims

In the course of the substantive sessions, the Panel reviewed claims in category "C" contained in the First Instalment prepared by the secretariat. The Panel examined the claims to determine whether they meet the legal and evidentiary requirements established by the Governing Council and to make recommendations to the Council on the amounts of awards to be allocated to each Government and individual claimant.

Due to the voluminous number of category "C" claims filed with the Commission, the Panel determined as a general matter that claim-by-claim review would not be possible for all losses on the "C" form if the Governing Council's goal of expedited priority consideration is to be met. Moreover, such an approach may lead to inconsistent results. Therefore, in accordance with Decision 1, the Panel adopted, where appropriate, "expedited procedures to process [category "C" claims], such as checking individual claims on a sample basis, with further verification only if circumstances warranted."[100] Further discussion on the Panel's approach and development of a mass claims processing system is discussed below in section D.

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[98] The preparation of the claims by the "C" unit included, inter alia, the selection and distribution of sample claims; translation of relevant documents; development and filling-in of "sample claim--summary sheets" for each of the loss elements on the category "C" claim form.

[99] Rules, Article 30, para. 2; and Article 33, para. 2.

In accordance with Article 34 of the Rules, the Panel received assistance from the secretariat on a continuous basis during the substantive sessions. Secretariat staff members attended all sessions of the Panel, providing it with administrative, technical and legal support as well as with information as required.

When necessary, the Panel also received valuable assistance from experts in a number of disciplines to facilitate the proper review of the claims. In particular, the Panel received expert assistance in the areas of mass claims processing, employment law, general medicine and psychiatric medicine related to traumatic stress, and statistics. Concerning particular loss elements, the experts helped the Panel to define criteria where none existed, or developed detailed criteria within the guidelines provided by the Governing Council.[101]

In its review of category "C" claims, and in making its recommendations to the Governing Council, the Panel applied relevant Security Council resolutions, Governing Council Decisions and other applicable rules of international law.[102] In addition, the Panel took into account the information provided by the Executive Secretary in the Article 32 report accompanying the submission of the First Instalment of claims; the reports presented to the Governing Council in accordance with Article 16 of the Rules (Reports 1 to 7); all additional information and views presented by Governments that submitted claims and by the Government of Iraq in response to those reports; letters and reports presented by Governments that submitted category "C" claims providing background information related to their consolidated claims; the information and evidence contained in the claims themselves; and relevant United Nations reports as well as other sources.

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[100] Decision 1, para. 8; see also Rules, Article 37(b).

[101] An example of the Panel's reliance on experts is in relation to claims for MPA. The Governing Council in Decision 8 established limits on compensation for seven categories of MPA. The Council mandated that for five of the seven situations, ceilings rather than fixed amounts should be used in determining the level of compensation. The expectation of the Council, therefore, was that the Panel would apply some differentiating criteria to determine whether claims falling within one of these five categories should receive the ceiling amount or a lower sum. During consultations with the secretariat, the Panel requested expert assistance to determine whether criteria could be developed that could be applied to the various types of MPA claims put forward by claimants. Accordingly, a panel of experts was convened representing disciplines such as psychiatry, psychology, general medicine, and war and disaster medicine. Following meetings in March 1994, a comprehensive report containing the requested "trauma-related" criteria was produced. This report was provided to the Panel for review and the criteria proposed therein, with several minor changes, was adopted by the Panel. The "Report of the Panel of Experts Appointed to Assist the United Nations Compensation Commission in Matters Concerning Compensation for Mental Pain and Anguish" (the "MPA Report") is attached at Annex VI.

[102] Rules, Article 31.

The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

D. Need for Mass Claims Processing

In the two-and-a-half years since the commencement of the filing period for "C" claims, the Panel notes that more than 368,000 claims have been filed with the Commission, with a total of more than 415,000 being expected.[103] The Governing Council has directed that simple, expedited procedures be used -- "such as checking individual claims on a sample basis, with further verification only if circumstances warranted"[104] -- so that this massive filing of claims can be resolved within a reasonable period.

The Panel has found that with such a large number of "urgent" claims to be reviewed in a relatively short period of time, the methods used to process them necessarily must depart from traditional approaches to claims adjustment or arbitration. Reflecting these observations and the Governing Council's directive, the Panel has concluded that it is neither appropriate nor feasible, and will not be in the future instalments, to review individually each element of loss for each "C" claim. This is not to say that each claim is not deserving of such an individualized review to match the efforts made by some claimants and their respective governments in preparing the claims. Indeed, for the reasons explained more fully below, certain losses under category "C", such as claims for death of a family member, will receive claim-by-claim attention.[105] Notwithstanding an individualized approach for certain losses, however, most claims necessarily will be processed under methodologies designed to resolve massive numbers in a fair and expeditious manner. In developing such an approach, the Panel has weighed the interests of Iraq as well as those of the claimants and the humanitarian concerns underlying category "C."

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[103] The deadline for submission of category "C" claims to the Commission expired on 1 January 1994. Annex I shows that, as of 2 August 1994, the Commission has received notice of the filing of more than 415,000 category "C" claims. Although the deadline for submitting "C" claims has passed, additional submissions are expected.

[104] Decision 1, para. 8.

[105] By way of further examples, for category "C" loss elements in which the number of claims is relatively small, or, in another context, where the causal relation to Iraq's invasion must be closely evaluated, a claim-by-claim review may be the appropriate methodology to employ.

The Panel also is keenly aware that its review of the 2,874 claims contained in the First Instalment is only an initial step towards resolving all of the claims in category "C." From the outset of its review, therefore, the Panel has focused on the development of a system geared for processing the massive population of category "C" claims.[106]

1. International Precedents for Mass Claims Processing

The Panel notes that the development of a mass processing system for category "C" claims is not without precedent. Both historical and more recent analogues exist to show that similar systems have been applied in different contexts to resolve large numbers of claims.

A number of tribunals and mixed claims commissions, dating back several centuries, have had dockets of hundreds, if not thousands, of claims to resolve.[107] In a fairly recent example, the United States-German Mixed Claims Commission, which operated from 1922 to 1939, disposed of more than 20,000 claims.[108] This commission was faced with the task of resolving a large number of claims and sought from the outset to implement a method for their orderly disposition. The concept adopted was to "announce . . . principles and rules of decision applicable to a group or groups of cases as far as applicable . . . in the preparation and presentation of claims."[109] Following this approach, the commission issued "administrative decisions" covering a number of substantive and procedural topics, intended to allow for the consolidation of many kinds of cases, or deciding them together by issuing joint awards.[110]

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[106] In the development of its approaches, the Panel has had the benefit of the assistance of Francis E. McGovern, Professor at the University of Alabama School of Law and expert in the trial of mass torts. For a more detailed overview of some of the issues described in this section, see Gibson, C.S., "Mass Claims Processing: Techniques for Processing Over 400,000 Claims for Individual Loss at the United Nations Compensation Commission", in *The United Nations Compensation Commission* (R. Lillich, ed., Thirteenth Sokol Colloquium at the University of Virginia, 1994).

[107] See e.g., D. Bederman, "Historical Analogues of the U.N. Compensation Commission", in *The United Nations Compensation Commission* (R. Lillich, ed., Thirteenth Sokol Colloquium at the University of Virginia, 1994) (hereinafter "Historical Analogues"), and Garmise, "The Iraqi Claims Process and the Ghost of Versailles, 67 N. Y. U. L. Rev. 840, 848 (1992) (the authors discuss a number of the following claims commissions: tribunal established under the Jay Treaty of 1794, issued 536 awards; United States-Mexico Claims Commission, created in 1868, considered more than 2,000 claims; claims settlement between Great Britain and the United States of August 1910; claims settlement between Poland and Germany, established under the Geneva Convention of May 1922, decided more than 10,000 claims; United States-Mexico Claims Commission, established by the Conventions of September 1923; United States-German Mixed Claims Commission, established by the Agreements of August 1922 and December 1928, disposed of 20,433 claims, rendering awards in over 7000 instances; Franco-German Arbitral Tribunal and Anglo-German Arbitral Tribunal, adjudicated 20,000 and 10,000 claims, respectively; United Nations Tribunal for Libya, established by the Treaty of Peace between the Allies and Italy of 1947; Iran-United States Claims Tribunal, established in January 1981, began with a docket of nearly 4,000 claims and has adjudicated hundreds of these to date, most of the other cases having been settled).

[108] Historical Analogues, at pp. 16-17.

[109] Id. (quoting Mixed Claims Commission, United States and Germany, Rules of Procedure, article VII, para. c (adopted 15 Nov. 1922), reprinted in 8 *R. Int'l Arb. Awards*, 469, 473).

To accommodate yet another order-of-magnitude increase in the number of claims to be processed, proceedings in the context of mass torts, primarily in the United States, have developed sophisticated methods for resolving the massive filings. Not only procedural, but also technical innovations, have been introduced, such as making use of computer support, standardized forms and questionaires, sampling and aggregation techniques, statistical analysis and rule-based systems for processing many thousands of cases.[111] These developments have begun to show that there may be advantages -- beyond merely judicial economy, the decrease in transaction costs and the expediting of proceedings -- for using mass processing techniques. The use of such techniques, when applied properly, may actually increase the general level of efficiency and accuracy while reducing the bias that may be present in any individualized case.[112]

2. Panel's Perspective

As mentioned above, the Panel emphasized during its substantive working sessions that the processing of the 2,875 category "C" claims in the First Instalment should always be viewed in the context of what is necessary to develop a mass claims system for processing eventually the remaining 415,000 "C" claims. In this regard, the correct conceptual approach to each working session was important. When using a system that relies on sample claims to examine and to highlight proposed criteria, the Panel sought to avoid a common pitfall: thinking only in terms of what is necessary to resolve the particular claim. Each claim was approached as a "sample" of the numerous other claims that are similarly situated with respect to the factual and legal issues contained therein; each such claim was used to assist in formulating general criteria, whether related to issues of causation, evidence, valuation or otherwise.

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[110] Id.

[111] See e.g., *Cimino v. Raymark Industries*, 751 F. Supp. 649 (E.D. Tex. 1990); *Hawkinson v. A.H. Robins Co., Inc*, 595 F. Supp. 1290 (1984) (the "Dalkon Shield" litigation). For general discussion of mass processing techniques, see also McGovern, F., "Resolving Mature Mass Tort Litigation", 69 *Boston Univ. L. Rev*. 659 (1989); Saks, M. & Blanck, P., "Justice Improved: The Unrecognized Benefits of Aggregation and Sampling In The Trial of Mass Torts", 44 *Stanford L. Rev*. 815 (1992); cf., Bone, R., "Statistical Adjudication: Rights, Justice, and Utility in a World of Process Scarcity," 46 *Vand. L. Rev*. 561 (1993).

As regards the Dalkon Shield litigation, one commentator has noted in regard to mass claims methods used in Dalkon Shield, that

> statistical sampling methods can be effectively used to compile claims data regarding causation as well as information about losses suffered by the victim class. . . [S]uch data enable extrapolation of an accurate, comprehensive, and refined matrix of compensation categories. On McGovern's account, the sampling methods, databases, and resulting payment schedules developed in the asbestos and Dalkon Shield cases satisfied all practical measures of fairness and efficiency. This news enhances the attractiveness of collective processes generally and class actions in particular.

Rosenberg, D., "Of End Games and Openings In Mass Tort Cases: Lessons From A Special Master", *Boston Univ. L. Rev*. 695, 696 (1989).

[112] See "Justice Improved: The Unrecognized Benefits of Aggregation and Sampling In The Trial of Mass Torts", 44 Stanford L. Rev. at 851.

In addition, the Panel found that an "aggregate picture" of the claims -- presented often through a review of many sample claims and the respective claimed losses, statistical analyses of claimed amounts and evidentiary patterns, and common socio-economic characteristics of claimants -- provided it with a level of comfort concerning its general criteria and conclusions, and allowed certain general presumptions to be made, that would not have been possible in the context of resolving claims on an individual basis. It is precisely because the Panel was able to obtain a thorough overview of the claims that it was also able to achieve a high level of confidence in the expedited approaches adopted, subject to several limitations of the First Instalment, which are discussed below.

3. Presentation of the Claims

Another important set of considerations had to be taken into account in the development of a mass processing system for category "C" claims. The Panel's examination of the claims -- not only those in the First Instalment but also those contained in later submissions which were reviewed by the secretariat for purposes of the quarterly Article 16 Reports -- has revealed distinct differences both in the quality of presentation of the claims and in the patterns, relevance and materiality of the evidence submitted by claimants. For example, many claims are very carefully prepared, presenting complete explanations of the bases for the requested compensation and containing extensive documentation (or explaining why evidence was unavailable). Others, however, are less well prepared, occassionally confused, inaccurate or containing mathematical errors. In addition, some claims have been forwarded to the Commission in tattered condition or photocopies may be barely legible, making these claims difficult even to read.

These patterns would appear to reflect certain characteristics of the claimant population. In particular, they reflect differences among claimant countries, and within countries, by income and education level. Certain claimants may be well-educated or relatively sophisticated individuals. For this group, the proper filling in of the claim form generally was not unduly difficult. Other claimants received extensive guidance and feedback from their government through a national claims program.[113] This group, too, will have done a reasonably good job of filling in the forms properly to present their claims. Many claimants, however, do not have a high rate of literacy, may not have benefited from, or chose not to avail themselves of, the guidance and corrections of a well-organized government claims program. For these individuals, the proper completion of the claim form was a very unusual and difficult exercise.

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[113] A number of claimant governments have well developed and organized national claims programmes providing for a careful review of the claims, and, in some cases, for verification of the losses contained therein. In addition, some of these governments have provided covering briefs discussing the general factual and legal considerations that are relevant to the individual claims they have submitted. Other governments, however, apparently have served only as a

For all groups of claimants, consideration is given to the fact that the category "C" claim form itself, in its structure and instructions, contained certain ambiguities, omissions and defects which, in turn, encouraged some measure of confusion or mistakes.

Bearing in mind these circumstances, the Panel has sought to create a mass claims processing system that treats claimants, as well as the responsible party, Iraq, as fairly as possible, within the bounds of the Rules, Decisions and guidelines established by the Security Council and the Governing Council. The Panel also has been influenced by the humanitarian nature of its work in this regard. Where information was available, the Panel has taken into account the socio-economic backgrounds of claimant populations from particular countries and the scope of the relevant national claims programmes. Further, the Panel requested the secretariat's assistance in fact-finding efforts to generate independent means for verifying claims that provided little explanation or evidence. Nevertheless, differences in the presentation of the claims have been noted by the Panel and sample claims have been reviewed to evaluate these differences.

When evaluating claims and loading them into the computer database, the Panel has recognized the need to correct errors claimants have thus made in completing the claim forms[114]. Nevertheless, the considerations described in this section have placed practical limitations, in a number of respects, on the mass claims processing system developed for category "C" claims. Certain refinements, as well as detailed distinctions regarding legal and factual issues, are not possible because the pertinent information was not provided in a clear manner or on a regular basis, or simply because the number of claims corresponding to a particular loss was too numerous to perform individual and detailed examinations. The Panel's evaluation criteria, processing methodology and resulting recommendations for compensation must take these factors into account.

4. General Approach

In light of all of the foregoing, the Panel, with the assistance of the secretariat, has implemented a general approach that applies mass processing methods and techniques to the losses

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forwarding service for their claimants. Claims which they have received have been subjected to little or no review, but merely have been sent to the Commission for filing.

[114] For a further description of this operation, see infra, Part IV, section A.3.

contained under category "C". The Panel's goal has been to create a system that will lead to the fair, expeditious, and efficient processing of claims. In light of the factors discussed above, the Panel has been influenced to adopt an approach that renders practical and simple justice, while weighing the interests of the claimants and Iraq.

As a specific means to this end, the category "C" claim was divided into its constituent loss elements, such as personal property losses, motor vehicle losses, or the mental pain and anguish from being forced to hide during the invasion. This breakdown has allowed the Panel to take up each loss element in turn, in order to develop a relatively simple and efficient processing methodology to be applied to the loss element.[115] As the Panel continues its work on the claims in future instalments, it may find that fairness and processing efficiency dictate that the proposed loss elements be further disaggregated, or, in the alternative, re-aggregated.

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[115] The principal loss elements distinguished under category "C" are as follows, listed by page on the "C" claim form:

"C1":	claims for departure-related expenses claims for relocation-related expenses claims for MPA for hostage-taking or other illegal detention for more than three days claims for MPA for hostage-taking or other illegal detention for three days or less claims for MPA for "forced hiding"
"C2":	personal injury claims for medical expenses personal injury claims for related MPA claims for MPA for witnessing the serious personal injury of a family member
"C3":	claims for death of family member that include medical or burial expenses claims for death of a family member that include losses of support income claims for death of a family member for related MPA claims for MPA for witnessing the death of a family member
"C4":	claims for personal property losses (excluding motor vehicles) claims for motor vehicle losses where the claim is for total value of the vehicle claims for motor vehicle losses where the claim is for repair costs
"C5":	bank losses claimed against Kuwaiti banks bank losses claimed against Iraqi banks securities losses
"C6":	salary and wages claims employment-related support claims claims for related MPA
"C7":	real property claims for damages real property claims for loss of rental income
"C8":	individual business claims

The approach developed relies on computerized support, the categorization and grouping of claims presenting similar factual and legal issues, the individualized review of sample claims from the relevant groupings, the analysis of statistical data regarding the claims, the extrapolation of findings with respect to sample claims to the non-sampled claims, and additional verification of individual claims only when necessary.

a. Instalments

As noted above[116], the population of more than 415,000 category "C" claims is to be presented to the Panel in a number of instalments over two functional phases. The first two, or if necessary three, instalments may be viewed as the "precedent phase." Subsequent instalments will constitute the "application phase."

1) Precedent Phase

During the precedent phase, the focus of the Panel is on developing and implementing a mass processing system containing criteria for evaluating, verifying and compensating category "C" claims. This exercise began significantly with the consideration of the claims in the First Instalment. The role of the Panel is of paramount importance during this phase of the work. Subject to adaptations that may prove necessary in the future, it has sought to consider and to adopt the criteria that not only resolve the claims immediately before it, but that also should result in the fair and expeditious processing of the remaining population of "C" claims.

The instalments in the precedent phase will contain a relatively small number of claims, such as the 2,874 claims in the First Instalment. The smaller number of claims is intended to facilitate the processing and evaluation of the claims. The development of criteria mandates a more individualized and time-consuming review of claims, in order to allow the secretariat and the Panel to identify and to define the issues that appear to be relevant to the evaluation and compensation of most of the 415,000 "C" claims comprehensively and with sufficient specificity. Further, the smaller numbers are necessary while the computerized system for tracking, analyzing, grouping and processing claims is undergoing further development.

At the same time, the number of claims considered in the precedent phase must be large enough to ensure that a sufficiently representative cross-section from the total population of "C" claims is considered. In particular, claims from the countries representing the largest number of claimants should be included in the precedent instalments.[117] This will ensure that virtually all of the common factual and legal issues relevant to the disposition of the majority of the 400,000 category "C" claims, as well as any important country-specific issues that may present themselves, are raised by the claims in the precedent instalments.

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[116] See supra n. 5 and accompanying text.

2) Application Phase

The mass processing system containing the claims evaluation and compensation criteria resulting from the disposition in the precedent phase of the generally applicable issues will be applied to the claims in the application phase. The instalments in the application phase are planned to contain the bulk of the claims submitted under category "C". The secretariat, during this phase, will be administering what might be considered a large "claims adjustment" operation in which claims are reviewed on the basis of the established criteria by the trained staff of claims reviewers, as the claims are entered into the "C" claims computer database. From the secretariat's perspective, the emphasis during the application phase will be on analyzing the claims and quality control; that is, the secretariat's resources will be directed toward organizing and supervising the proper analysis and input of the numerous claims in accordance with the established criteria.

The role of the Panel will also evolve during the application phase. While it will continue to consider any new legal or factual issues that may arise, its primary focus will move to monitoring and verifying that the system and criteria adopted during the precedent phase are being properly implemented by the secretariat. The Panel, for example, may wish to perform random spot-checks on the claims that are being submitted in the application phase to review processing procedures and accuracy. It may also consider, in light of relevant experience and suggestions from the secretariat, adopting modifications to the processing system and/or criteria.

b. Grouping and Sampling

As noted, the development of an efficient system containing evaluation and compensation criteria for each loss element is the real goal of the precedent instalments. Once the criteria are established, they will form the basis for grouping and categorizing the claims. In light of the factors discussed above, the criteria must be objective and capable of easy application to the claims. They must be clearly comprehensible so that the secretariat's claims reviewers can apply them as they review the individual claims and enter the relevant facts and findings into the computer database.

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[117] As Annex I illustrates, the countries from which the Commission has received more than 2,000 category "C" claims are Bangladesh, Egypt, India, Iran, Jordan, Kuwait, Lebanon, Pakistan, Philippines, Somalia, Sri Lanka, Sudan, Syria, United Kingdom,, United States, and Yemen. To facilitate the implementation of a processing system that relies on sampling techniques to develop claims evaluation criteria, it will be important to ensure that claims from each of these countries, if not already included in the First Instalment, are represented in later instalments during the precedent phase.

This point on the review process is an important one. The standard and accurate review of claims as they are entered into the computer will result in their proper grouping and processing for purposes of determining entitlement to recovery and compensation. As the Panel adopts the criteria for each loss element, the secretariat will produce a comprehensive set of internal guidelines for claims review. These guidelines, to be approved by the Panel, will contain the criteria for evaluating and compensating the claims, as well as step-wise detailed explanations and examples. The computer software will be coded so that answers to questions will result in the claim being grouped or subgrouped, as appropriate. By performing searches on the computer, the secretariat will be able to determine, for example, the size of the groups and the claims included therein, the number of claims from each particular country, as well as those containing relevant substantive characteristics (e.g., type and level of evidence).[118]

As discussed above, in the precedent instalments, the Panel is presented with groupings of claims reflecting generally applicable factual and legal issues relevant to the evaluation and compensation of the claims. The results of the Panel's decisions and compensation recommendations regarding the sample claims and the issues contained therein will be applied to the remainder of the claims in the sub-grouping from which the samples were drawn. In the application instalments, sample claims taken from the groupings, as defined and approved by the Panel in the precedent phase, together with the proposed recommendation made with respect to those groupings, will be presented to the Panel. The size of the sample depends on the number of claims in a particular group and the distribution thereof, as well as the complexity of the factual and legal issues raised by the claims in the group.

The on-going review of the sample claims will permit the Panel to determine (i) whether application of the evaluation and compensation criteria with respect to the claims leads to a fair and equitable result; (ii) whether the groupings from which the claims were taken are representative of the issues presented by the claims in each instalment; and (iii) whether a particular grouping of claims is sufficiently homogeneous, so that the decisions made with respect to the sample claims from a particular group may be applied to the non-sampled claims.

c. The Computer System for Claims Processing

The Commission made a fundamental choice when it determined that computer support would be necessary to process category "C" claims. Processing more than 415,000 claims necessarily requires dependence on a computer system for tracking, analyzing, grouping and calculating compensation on the claims.

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[118] This approach to processing the claims is in accordance with the guidelines in the Rules. Claims in each instalment are to be grouped "according to, inter alia, the type or size of the claims and the similarity of legal and factual issues," to "facilitate the work of Commissioners and to ensure uniformity in the treatment of similar claims." See Rules, Article 17.

A computer prototype has been developed specially for the Commission and is being used for purposes of the First Instalment. An "input" system, used to load the claims of the First Instalment, captures all of the relevant factual information from the claims. This system will require further development in light of the criteria adopted by the Commissioners during their work on the First Instalment. An "enquiry" system has also been developed, enabling the secretariat to view, analyze and group the claims -- to "see" them. The secretariat is in the process, as the Panel adopts the criteria during this First Instalment, of developing applications that will automate, to the degree appropriate, the calculation of compensation.

d. Limitations of First Instalment

A comment should be made about the limitations of devising a complete mass claims processing system on the basis of the claims included in First Instalment alone. The Panel has found that certain further considerations and adjustments will have to be made to the methods and criteria adopted herein to reflect the factual, legal and other issues of claims contained in future instalments.

The First Instalment contains only those claims that were covered by the First Report of the Executive Secretary issued pursuant to Article 16 of the Rules and that were filed with the Commission as of 30 September 1992. The claims in the First Instalment, therefore, do not reflect submissions that have been filed with the Commission from all concerned governments. Some of the countries with the largest number of claims are not represented in this instalment. Further, the claims in this instalment were some of the earliest to be filed by the governments concerned, and in several instances, do not reflect the experience developed by those governments in preparing and filing the category "C" claims, which is reflected in later submissions. In addition, although the claims in the First Instalment cover each of the category "C" losses, there is an insufficient number of claims within particular losses to raise all of the generally applicable issues, and, therefore, to allow the Panel to develop final evaluation criteria and general conclusions.

In sum, in light of the factors outlined above, it should be recognized that the precedental effect of the First Instalment has limitations and that the criteria resulting from the disposition of the claims should not be viewed as necessarily final. Indeed, the Panel anticipates that it may be required to re-visit certain of its findings in the future.

IV. CLAIMS EVALUATION AND COMPENSATION METHODOLOGIES

A. Category "C" Claims in the First Instalment

1. Claims in First Instalment

The First Instalment of category "C" claims includes a total of 2,874 claims from nineteen countries. Included in the instalment are those claims transferred from category "B" to category "C" pursuant to a request from the "B" Panel.[119] The table below displays the countries included in the First Instalment with the corresponding number of claims submitted and total amounts claimed.

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[119] See supra, n. 8 and accompanying text.

Country	Number of Claims	Total Amounts Claimed US$
Australia	56	2,895,799
Bahrain	25	145,477
Bolivia	1	148,499
Brazil	12	826,880
Denmark	28	2,261,153
France	4	0
Japan	5	0
Jordan	6	0
Kenya	1	56,998
Kuwait	1070	11,661,150
Malaysia	1	64,488
F.Y.R. of Macedonia	4	83,772
Nepal	3	24,992
Pakistan	1105	29,935,006
Poland	38	1,322,072
South Africa	2	166,917
United Kingdom	186	7,326,048
United States	268	14,410,550
F.R.Y. (Serbia & Montenegro)	59	610,530
TOTAL	2874	71,940,331

It should be noted that the "Total Amounts Claimed" listed in the above table do not reflect claims for MPA, with respect to which the claimant was not requested to assert claimed amounts on the "C" form. Claimants also have sought compensation for other loss elements without specifying the value of such loss. The "Total Amounts Claimed" would not reflect such losses. On the other hand, the "Total Amounts Claimed" do include claims the amounts for which, in a number of cases, exceed the category "C" claims compensation limit of US$ 100,000. In view of these considerations, and for a variety of other processing reasons explained in the report, the "Total Amounts Claimed" represent only a tentative approximation. The Panel wishes to emphasize that any analysis or comparison that makes use of these or other figures, particularly in connection with the amounts claimed as compared to the amounts recommended to be paid to claimants, should take into account this important caveat.

2. Threshold Issues Relevant to All Loss Types

The Panel considered two threshold issues generally relevant to category "C" claims: (1) whether the claimant's identity had been established, and (2) whether the claimant's presence or residence in Iraq or Kuwait on or prior to 2 August 1990 had been established.

a. Identity of Claimant

The "CID" page of the "C" claim form instructs claimants to "[a]ttach documentation confirming [their] identity, such as a photocopy of [their] passport or national identity card, etc." Accordingly, as a threshold matter, the Panel considered whether the requirement implicit in this instruction -- namely, that there be proof of the claimant's identity -- had been satisfied. The Panel notes that, except in a very small number of cases, each of the claimants in the First Instalment submitted documentary evidence relevant to establishing the claimant's identity. See supra Part II, section E.2.a.2). Typically, this included national and employee identification cards, passports, and similar documentation. The Panel also took into account the fact that, pursuant to Articles 14 and 15 of the Rules, only those claims that have satisfied the formal requirements established by the Governing Council may be presented to commissioner panels for consideration.[120] When a claim does not have the proper evidence in support of the identity of the claimant, any defects are normally addressed before the claim is submitted to the Panel in an instalment.

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[120] Specifically regarding the formal requirements, Article 14 states in pertinent part:

> The Secretariat will make a preliminary assessment of the claims received in order to determine whether they meet the formal requirements established by the Governing Council. To this end the Secretariat will verify:
>
> [. . .]
>
> b) that the claims contain the names and addresses of the claimants and, where applicable, evidence of the amount, type and causes of losses;
>
> c) that the affirmation by the Government has been included in respect of each consolidated claim stating that, to the best of the information available to it, the claimants are its nationals or residents, and that it has no reason to believe that the information stated in the claims is incorrect;
>
> d) that all required affirmations have been given by each claimant.

Article 15 of the Rules, a related provision, provides that:

The Panel determined that the evidence submitted by claimants and the affirmations on their claim forms that the information in the claim is correct,[121] together with the affirmation provided by each submitting government to the effect that the claimants are its nationals or residents, as well as the secretariat's preliminary review and assessment of the claims to determine whether the formal requirements had been met, constitutes sufficient evidence of the claimants' identity. The Panel also concluded that, for processing purposes, no further review of the claims would be required if the secretariat continues to make a preliminary assessment that the claims received have satisfied the formal requirements prior to their submission to the Panel.

b. Presence or Residence in Iraq or Kuwait

Further, for applicable cases, the Panel considered whether there was sufficient evidence to establish the fact of a claimant's presence in Iraq or Kuwait prior to 2 August 1990. In this regard, the Panel first evaluated the documentary evidence available in support of this fact. The Panel observed from the sample claims reviewed and statistical information presented by the secretariat regarding the evidentiary patterns, that the vast majority of claimants have established the fact of their presence or residence in one of those countries. The most common forms of proof submitted include passports or other identification documents, employee identification cards, employment contracts, rental agreements, and other documents indicating a date that enabled the Panel to conclude that the claimant was indeed present in Iraq or Kuwait on the date mentioned. Claimants also submitted other evidence, such as personal statements and witness statements in support of their losses, containing information relevant to establishing the fact of their presence and/or residence in Iraq or Kuwait at the time of the invasion. The Panel concluded that claimants who had provided such evidence had proven the fact of their residence or presence in Iraq or Kuwait prior to the invasion and occupation. See also Part IV, section B.1.a.

A very small number of claimants failed to provide documentation relevant to proving the fact of their residence or presence in Iraq or Kuwait. With respect to these claimants, the Panel took into account the fact that the "CID" page of the claim form requests claimants to provide

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> If it is found that the claim does not meet the formal requirements established by the Governing Council, the Secretariat will notify the person or body that submitted the claim about that circumstance and will give it 60 days from the date of that notification to remedy the defect. If the formal requirements are not met within this period, the claim shall not be considered as filed.

[121] On the "CSig" page of the claim form claimants are required to sign an affirmation that states: "I hereby affirm that the information in this claim is correct. (For family claims: I affirm that I am duly authorized to submit this claim by each family member on whose behalf I am making this claim)."

certain basic information that may be used to verify their presence or residence in Iraq or Kuwait. Specifically, in addition to such information as the claimant's name, date of birth, nationality, and passport number, the "CID" page also instructs claimants to indicate their sponsor's name in Iraq or Kuwait, the sponsor's address and telephone number, and if known, the sponsor's identification number. Of particular relevance, claimants also are requested to provide their Kuwaiti civil identification number, or their Iraqi residency permit number. Insofar as claimants who were residing in Kuwait are concerned, a claimant's civil identification number provided the Panel with a specific means to verify the fact of the claimant's residence in that country prior to the invasion.[122]

The Panel further noted that these claimants had provided relevant information on other pages of the claim form, such as the "C6" page for employment-related losses (e.g., employee identification number, employer address and telephone number), or the "C5" page regarding bank account losses (e.g., bank name, account number). The Panel considered this information to provide circumstantial support of the fact of the claimant's presence or residence in Iraq or Kuwait.

Based on the foregoing, for those cases where this threshold issue applied, the Panel determined that, with respect to the claimants of the First Instalment, within the context of a mass claims processing methodology, there was the reasonable minimum evidence of the fact of claimants' residence or presence in Iraq or Kuwait.

3. Completion Errors and Correction Efforts

As noted in Part III, section D.3, supra, as a result of a variety of factors, including the claimants' backgrounds, lack of instruction, and misinterpretation of the claim form, a significant portion of the claims have been filled-in in a disorganized, improper and incomplete fashion. Given the processing methodologies developed by the Panel, such mistakes may have a bearing on the claimants' entitlement to compensation and the extent thereof.

Within the limitations imposed by mass processing, and strictly on the basis of the information provided by the claimants, efforts have therefore been made to correct errors in claims when these were evaluated and loaded into the computer. This entails a significant operation, performed by the secretariat, to complete properly the claimed losses, to correct overlapping or double claims, to transfer claims in whole or in part to the proper loss category, or to make appropriate transfers among loss elements within a particular loss category.

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[122] The Kuwait Public Authority for Civil Information database, a copy of which was provided to the Commission, keeps records of all persons that were legally resident in Kuwait, whether of Kuwaiti nationality or not.

The description of the processing considerations and criteria contained in Part IV, infra, provides a number of examples of typical errors and corrective measures as they apply to the various individual loss elements. See, e.g., section 1 on the organization of the various components of "C1" departure-related losses, section 2.d.2) on the classification of "C2" injuries, and section 8.d.1) on the proper categorization of losses incurred in connection with the operation of a business.

4. Multiple Recovery and Duplicate Claims

a. Inter-Category Duplicate Claims and Multiple Recovery

1) Category "A" Claims

Decision 1 provides for the submission of a claim under category "A" by "any person who, as a result of Iraq's invasion and occupation of Kuwait . . . departed from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991."[123] Claimants may submit an "A" claim for a fixed amount of US$ 2,500 per individual or US$ 5,000 per family.[124] The instructions also state: "If you and your family members agree not to file claims under any other form or category, you may use this form to claim an additional amount of U.S.$1,500 (for a total of U.S.$4,000 per person), and the limit for your family (as defined in paragraph (3) above) will be raised to U.S.$8,000."

The criteria for category "A" claims give rise to two circumstances under which a category "C" claimant could possibly receive multiple or additional compensation for the same loss. First, claimants filing claims for departure under category "A" for a fixed payment of US$ 2,500 may also file a "C" claim for departure-related costs (i.e., a claim for "C1-Departure"), thereby giving rise to the possibility of multiple compensation. Second, according to the "A" claim form, category "A" claimants submitting an "A" claim for a fixed payment of US$4,000 per individual (with a maximum payout of US$ 8,000 per family unit) are not to submit any other type of claim under any other category. The potential for additional recovery lies in the possibility that an "A" claimant claiming for this higher payment has also submitted a "C" claim.

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[123] The "Instructions for Claimants" on claim form "A" state that "[t]his form is applicable only to those who departed from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 as a result of Iraq's unlawful invasion and occupation of Kuwait."

[124] In this regard, on claim form "A" claimants are instructed as follows:

> If you had to depart from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991, you may use this form to claim through your Government for a fixed lumpsum of TWO THOUSAND FIVE HUNDRED U.S. DOLLARS (U.S.$2,500). If other members of your family (as defined below) are also claiming for departure, all such family member claims should be submitted on a single claim form. No more than FIVE THOUSAND U.S. DOLLARS (US$5,000) will be paid under this form for departure with respect to any one family consisting of any person and his or her spouse, children and parents.

In light of the above, a cross-check is required to identify category "C" claimants who have filed an "A" claim and a "C1" departure claim. A cross-category check is also required to identify "A" claimants who have filed for the higher fixed amount under category "A" and who have filed a "C" claim. See infra, Part IV, section B.1a., for a further discussion of these issues in relation to "C1" departure and relocation claims.

2) Category "B" Claims

The potential for multiple recovery also is present in connection with category "B" claims for serious personal injury and death. The "Instructions for Claimants" on claim form "B" state:

> You may use this form to claim through your Government for a fixed lumpsum of TWO THOUSAND FIVE HUNDRED U.S. DOLLARS (U.S.$2,500). If other members of your family . . . are also claiming for fixed lumpsum payment for death, all such family death claims should be submitted on a single claim form. No more than TEN THOUSAND U.S. DOLLARS (U.S.$10,000) will be paid for death under this form with respect to any one family consisting of any person and his or her spouse, children and parents.

The instructions also state:

> If you believe that the losses associated with your serious personal injury or the death of your spouse, child or parent are larger than U.S.$2,500 and can be documented, you may submit an additional claim for amounts above U.S.$2,500 on a different claim form.**[125] In that case you may still claim through your Government for U.S.$2,500 as interim relief pursuant to this form. (Footnote added).

Claimants submitting a claim for the fixed amount of US$ 2,500 (or US$ 10,000 per family) under category "B" may submit further claims under category "C" or, as appropriate, category "D," for costs in excess of the fixed amounts paid under category "B" related to their injuries or the death of their spouse, child or parent. Claimants who are found to have claimed for the same costs or expenses on their "B" and "C" claim forms, should have any amounts paid under one category deducted from their compensation under the other.

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[125] The asterisks refer to a note on the instruction page of the "B" claim form which states: "Either Claim Form "C" (Individual Claim Forms for Damages up to U.S.$100,000) or Claim Form "D" (Claims of Individuals Not Otherwise Covered)."

3) Category "D" Claims

In Decision 7, the Governing Council set forth the criteria for claims filed under categories "D", "E" and "F". Category "D" consists of claims for individual damages above US$100,000; category "D" covers the same losses on which claims may be based under category "C". Paragraph 7 of Decision 7 states:

> These payments are available with respect to individuals who claim losses in excess of those compensable under claim forms B or C. These payments are also available with respect to individuals who have chosen not to file under claim form A, B, or C because their losses exceed $100,000. In addition, these payments are available to reimburse payments made or relief provided by individuals to others - for example, to employers or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council.

The "Instructions for Claimants" on claim form "D" state:

> These forms are applicable to individuals claiming for damages of MORE THAN ONE HUNDRED THOUSAND U.S. DOLLARS (U.S.$100,000) sustained as a result of Iraq's 2 August 1990 unlawful invasion and occupation of Kuwait. If you have already filed a claim for serious personal injury or death on Form "B", or if you have filed a claim up to the first U.S.$100,000 on Form "C" (Individual Claims for Damages up to U.S.$100,000), you may use these claim forms to file for the remainder of your losses. In addition, you may file a claim on these claim forms for reimbursement of payments made or relief provided by you to others (no matter what the amount of such claim is) for losses covered by any of the criteria adopted by the Governing Council. Do not duplicate any amount you have claimed on Form "C".

The Panel has requested the secretariat to explore measures that may be taken to minimize the risk of double recovery between claims filed under categories "C" and "D", including routine cross-checking between claims filed in these categories; reporting all loss element calculations and compensation recommendations for relevant claims in category "C" to the appropriate category "D" panels; joining claims and attached documents filed under category "C" and category "D" by the same claimant to enable a category "D" panel also to take into account the claimant's category "C" claim; and making available to the appropriate category "D" panel all of the relevant worksheets and valuation materials used by the Panel in its work.

b. Intra-Category Duplicate Claims

The large number of category "C" claims, the number of countries filing such claims, and the fact that claims are being submitted in several consolidated submissions, give rise to the potential for intra-category duplicate claims and multiple recovery; that is, the same individual may have filed two or more "C" claims for the same losses. An intra-category check therefore is required to identify claimants who have filed more than one "C" claim for the same losses.

The secretariat has performed such a check for the claims contained in the First Instalment. An on-going effort will be made to conduct such intra-category cross-checks for duplicate "C" claims using the computer. Should computer cross-checks prove not to be entirely feasible, the secretariat will devise alternative methods of cross-checking with the assistance of the governments.

c. Multiple Recovery Due to Compensation From Non-Fund Sources

In Decision 13 the Governing Council set forth guidelines to limit the potential for multiple recovery of compensation by claimants for the same losses. It also provided that "amounts paid to claimants as compensation from other sources be deducted from the compensation to be paid from the Fund to that claimant for the same loss."[126]

Accordingly, the Governing Council invited claimant governments and the Government of Iraq to seek to obtain and to provide the Commission with the following information. First, lawsuits pending in the courts of their jurisdiction against Iraq, or any compensation granted by those courts, for losses resulting from Iraq's invasion and occupation of Kuwait. Second, recipients of payments made or relief provided by the respective government, including where available, their names, Civil I.D. or Residency Permit numbers, passport numbers, dates of birth, types of losses and amounts paid. Third, recipients of payments made or relief provided by employers known to have operated in Iraq or Kuwait, for losses incurred by their employees as a result of Iraq's invasion and occupation of Kuwait, including where available, their names, Civil I.D. or Residency Permit numbers, passport numbers, dates of birth, types of losses and amounts paid.

In addition to Decision 13, the category "C" claim form requests claimants to indicate whether and how much compensation they may have received in connection with their losses. The Secretariat records this information, as well as any other information received from governments, claimants or other sources, in its computer database. Amounts known to have been received by the claimants in non-Fund compensation for the losses on which their claim is based may thus be deducted from the compensation payable to eligible claimants from the Fund.

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[126] Decision 13, para. 3(b) states: "When the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories "C", "D", "E", and "F" has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss."

The Panel also has considered carefully certain explanations provided by governments concerning payments they have made to their claimants. The Panel notes that these governments have represented that payments have been deducted from the individual claims prior to their submission to the Commission, or that they intend to recoup from individual claimants any duplicative payments received from the Commission for losses under category "C." Further, governments have represented that they will not seek reimbursement for these amounts in corresponding claims that may be submitted by them for their own losses.

The Panel has considered these measures and determined that they do serve to minimize the possibility of multiple compensation to individual claimants. The Panel stresses that each government will be expected to adhere to the measures suggested to ensure that claimants do not receive compensation from the Fund as well as from other sources.

B. Evaluation Methodologies and Compensation Criteria

1. Loss Type "C1": Damages Arising From Departure, Inability to Leave or Return, Decision Not to Return, Hostage-Taking or Other Illegal Detention

a. Departure and Relocation Claims

Decision 1, paragraphs 14 and 18, provide that compensation payments are available for losses due to departure from, inability to leave, or a decision not to return to Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991, as a direct result of Iraq's invasion and occupation of Kuwait (hereinafter referred to as "departure and relocation claims").[127] Damages arising from the above circumstances may be claimed on page "C1" of the claim form, including costs incurred for transportation, food, lodging, relocation expenses and similar costs. Page "C1" also enables claimants to submit claims for mental pain and anguish due to forced hiding, hostage-taking or other illegal detention.[128]

This section discusses the Panel's factual, legal and processing considerations in developing its methodology and criteria for departure and relocation claims; the Panel's methodology for reviewing claims under this loss type; and the substantive criteria applied by the Panel to verify and compensate these claims, in general, and more specifically, the claims in the First Instalment. It also sets forth the Panel's compensation recommendations for departure and relocation claims in the First Instalment.

1) Summary of Relevant Facts

The main factual considerations relevant to the Panel's methodology and criteria are summarized below.[129] Further factual details considered by the Panel are reported in the referenced documents.

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[127] Decision 1, paras. 14 and 18.

[128] The Panel's methodology for evaluating and compensating claims for hostage-taking, illegal detention and forced hiding is set forth in section 1.b., infra.

[129] Regarding the facts relevant to departure and relocation claims, the Panel consulted a wide variety of sources, including the following: United Nations Economic and Social Council (ECOSOC), *Report on the Situation of Human Rights in Kuwait under Iraqi Occupation, by Walter Kälin, Special Rapporteur of the ECOSOC Commission on Human Rights*, E/CN/.4/1992/26 (January 16, 1992) (the "Kälin Report"); International Labour Office (ILO), *Informal Report on Migrant Workers Affected by the Gulf Crisis*, (February-March 1991); ILO, *ILO Regional Seminar/Symposium on the Gulf Crisis and Its Implications for Labour-Sending Countries*, (May 1992); ILO, *Inter-regional Tripartite Round Table on International Migration (Arab and Asian Countries), Bangkok, 11-12 Dec.1990*, (Geneva, 1991); ILO, *Third Supplementary Report of the Director General, 249th Session* (Feb.-Mar. 1991); International Organisation for Migration (IOM), *Labour Migration and Returnees from Kuwait and Iraq*, IOM

a) Overview

According to several reports, in mid-1990, there were more than 2.6 million expatriate workers and their dependents living and working in Iraq and Kuwait; and in excess of 7 million in the Gulf region as a whole.[130] The Government of Kuwait reports that the country's pre-invasion population was approximately 2,142,600 persons, of whom 1,316,014 were expatriate workers and their dependants. The pre-invasion expatriate population in Iraq was in the vicinity of 1,162,000 persons.

In the months following the invasion, Kuwait's population is estimated to have decreased to nearly 492,000 persons, with at least 50 percent of Kuwaiti nationals and over 90 percent of the expatriate population leaving the country. In Iraq, the total number of expatriates is reported to have fallen to approximately 887,000 within two months of the invasion, and by the end of the hostilities, to less than 400,000 persons. The majority of those who remained in Iraq were stranded Asians and Egyptians, while those in Kuwait were predominantly Palestinians. Almost all nationals of OECD and other industrialized countries are reported to have departed. By the end of February 1991, in excess of 2 million people are estimated to have left Iraq and Kuwait, or to have been displaced or dislocated as a result of Iraq's invasion and occupation of Kuwait.

Assessment Mission to Bangladesh, The Philippines and Sri Lanka. (April/May 1991); IOM, *Plan of Action; Update of Operations (20 December 1990 to 15 January 1991)*; United Nations Disaster Relief Organisation News (UNDRO), "Iraq-Kuwait Crisis: The Plight of Returnees", Special Supplement; UNDRO, *Regional Humanitarian Plan of Action Relating to the Crisis between Iraq and Kuwait* (October 1991); Connell, J., "The Gulf War and Asian Labour Migration", (a paper prepared for the Conference on International Manpower Flows and Foreign Investment in Asia, September 1991); Van Hear, N., "Mass Flight in the Middle East: Involuntary Migration and the Gulf Conflict, 1990-91", in *Geography and Refugees: Patterns and Processes of Change*, Black, R. and Robinson, V. (eds.) (Belhaven Press 1993); Addleton, J., "The Impact of the Gulf War on Migration and Remittances in Asia and the Middle East", *IOM Quarterly Report*, (December 1991); Freedman, L. and Karsh, E., *The Gulf Conflict 1990-1991; Diplomacy and War in the New World Order* (1993); Gunatilleke, G., *Migration to the Arab World; Experience of Returning Migrants* (United Nations University Press, 1991). The Panel also considered information gathered by the secretariat during a fact-gathering mission to Kuwait in November 1993, material submitted to the Commission by several governments in support of claims under both category "A" and category "C", and certain verified information presented in the documentation attached to the claims.

[130] The statistical information provided in this section has been drawn from a variety of sources, including reports prepared by several international organizations and governments that were involved in the multilateral evacuation operations, and the relocation and reabsorption of departees from the Gulf region following Iraq's invasion and occupation of Kuwait. Several of these reports acknowledge that, due to the urgency of the circumstances, the massive numbers of displaced persons, and the general paucity of reliable pre-invasion sources, the statistics provided in the reports represent the responsible organization's best estimate of the situation.

b) Departure, Dislocation and Relocation Patterns

Iraq's invasion of Kuwait on 2 August 1990 precipitated a mass dislocation of persons living and working in those two countries. Hundreds of thousands of foreign workers and their families fled these countries in a bid to return home or to find safety. Thousands more were left stranded in third countries unable to return to their homes in Iraq or Kuwait due to the prevailing political situation.

(i) Departure Patterns

The mass exodus of persons resident in Kuwait commenced within a few hours of the entry of Iraqi troops into that country during the early morning hours on Thursday, 2 August 1990. The outbound migration of persons resident in Iraq did not reach mass proportions until several days later. Initial departure routes from Kuwait were towards Saudi Arabia. Thereafter, Jordan became the focal point of transit and departure for the thousands of expatriate workers and their families seeking to escape the hostilities. Iran, Saudi Arabia, Syria and Turkey were also used as departure and transit points by a large number of departees.

By most accounts, the majority of departees left Iraq and Kuwait during the first two months of the occupation. Persons continued to depart these countries in large numbers until mid-January 1991. Subsequently, the flow of departees is reported to have decreased substantially.

During the early stages of the exodus from Iraq and Kuwait, border countries are reported to have applied strict controls and procedures, often resulting in departees having to wait for several days before being allowed to enter or depart the country. Reports note, however, that the large numbers of people and the urgency of the situation made it very difficult for border authorities to apply the usual procedures for entry and departure to every new arrival into and departee from their respective countries when the number of displaced persons was at its highest.

The first groups of departees left Iraq and Kuwait using their own resources. According to a number of reports, fares and rental rates for buses and taxis, and fuel prices were inflated by up to 300 percent, and had to be paid in cash in United States dollars. Subsequently, departees left Iraq and Kuwait through government-sponsored evacuation programmes or with the assistance of one of several international organizations involved in the evacuation operations. During this latter stage, many departees continued to make their own way out of the conflict region.

Having reached a point of first arrival, many OECD nationals and Kuwaiti citizens, as well as the more affluent Asian and Arab expatriate workers, were able to secure passage out of Iraq, Saudi Arabia, Jordan, and Turkey by air using their own or government-provided funds. In light of the unforeseen numbers of departees, the latter often had to wait for several days before they were able to leave. The vast majority of departees, however, arrived destitute with little or no means of returning to their respective countries. Food, shelter, clothing, and medical requirements were met in transit camps established for such purposes by the host governments, by embassies or consulates, and/or by the international organizations involved in co-ordinating the relief effort; similar arrangements were put in place for overland transportation to air, sea and land evacuation points.

The main relief and evacuation activities were concentrated in Jordan. Relief operations on a smaller scale were also undertaken in Iran, Iraq, Syria, and Turkey. Perhaps half of the 700,000 third-country nationals transiting Jordan were Egyptians; others were mainly expatriates from Bangladesh, India, Pakistan, the Philippines, Sri Lanka, and Sudan. Most of the 60,000 evacuees who left or passed through Turkey were from Bangladesh, Pakistan, Sri Lanka and Vietnam together with some 5,000 Turkish nationals who returned home. Some 100,000 people entered Iran, of whom 70,000 were Iranian or Kuwaiti nationals, and most of the remainder comprised Pakistanis and Sudanese. More than 400,000 (mostly Egyptian and Kuwaiti nationals) are reported to have transited through Saudi Arabia. Of the 60,000 people who left Iraq for Syria, some 50,000 were Syrians; another 10,000 persons (primarily Lebanese and Palestinians) were evacuated from the country.

Upon arrival in their home countries, several governments, with the help of the international community, facilitated the absorption of the massive numbers of returnees by providing food, lodging, medical attention, clothing and nominal assistance for relocation purposes.

The table below provides a statistical overview of the composition of the expatriate population resident in Iraq and Kuwait, and of Kuwaiti nationals, in mid-1990, as well as an estimate of the number of departees and of the number of category "A" claims filed with the Commission to date. Annotations accompanying the table provide a brief overview of the departure patterns of nationals from the countries accounting for over 80 percent of departure-related claims under categories "A" and "C".

Country of Origin	Pre-2 August 1990 Population ('000s)		Evacuees/ Returnees/ Departees ('000s)	Category" A" Claims ('000s)
	Kuwait	Iraq		
Bangladesh (a)	112		63	62
Egypt (b)	215	900	500	290
India (c)	172	9	181	100
Jordan (including Palestinians) (d)	500	30	350	60
Kuwait (e)	825	---	452	50
Pakistan (f)	105	7	73-107	32
Philippines (g)	45	10	45-55	43
Sri Lanka (h)	100	1	79-101	88
Sudan (i)	15	200	35-200	20
Vietnam (j)	0	16	16	16
Europe and Americas (k)	8.3	22.1	30	14

(a) **Bangladesh**: Between 3 September 1990 and 15 January 1991, approximately 63,000 Bangladeshi nationals returned home from Iraq and Kuwait. Some 44,000 were transported home on IOM- coordinated air charters to Dhaka; 38,000 of them through Jordan, about 6,000 through Turkey, and less than 300 from Iran. The IOM was responsible for overland transport of Bangladeshis through Iraq to camps and transit centers in neighbouring countries. Other departees travelled overland through Iran, Turkey, Afghanistan and Pakistan. A number of returnees are reported to have received relocation assistance of approximately US$ 140 from their government upon their return.

(b) **Egypt**: Egyptians may have constituted 70 percent of the total departee population, with the majority of them passing through Jordan, and the rest transiting through Saudi Arabia, Syria and Iran. Practically all Egyptian departees were transported overland to Jordan in private or IOM-hired vehicles. In Jordan, they spent time in camps or transit centers before being moved to Aqaba, where they were transported by sea to the Egyptian ports of Nuweiba and Suez. Approximately 300,000 Egyptians travelled from Aqaba on Saudi Arabian funded ship charters between 3 September and 4 October 1990. 20,000 Egyptians were reportedly evacuated on the IOM road-ferry-road operations during and after the Allied air strikes from January to March 1991. Those with valid documents and proof of departure were given 1,200 Egyptian pounds in emergency aid which came from a Kuwaiti Government grant.

(c) **India**: The first wave of Indians to depart Iraq and Kuwait made their way, with minimal government assistance, in private vehicles to Jordan. Approximately 1,000 Indian nationals drove via Iran, Turkey, Afghanistan and Pakistan to India. An estimated 150,000 Indian departees were evacuated with the help of their Government. Only about 30,000 Indians made their way home with IOM assistance. The majority of, if not most, Indian departees left Iraq and Kuwait between August and October 1990.

(d) **Jordan**: The bulk of Jordanian nationals and Palestinians with Jordanian nationality left Iraq and Kuwait during the first two months of the crisis. The majority of those who left Kuwait in the first wave of departures, did so with minimal outside assistance. People who departed later may have had access to IOM-overland transport facilities. Those who could afford to departed by plane. The vast majority, however, travelled to Jordan by land via Iraq. Approximately 20 percent of the Jordanian/Palestinian community is reported to have been outside of Iraq and Kuwait when the invasion occurred. Some 317,000 Jordanians and Palestinians remained in Iraq and Kuwait throughout the occupation. The first wave of Palestinian and Jordanian departures from Kuwait was followed by a second wave which took place after March 1991. The Jordanian Government is reported to have provided relocation assistance.

(e) **Kuwait**: The majority of Kuwaitis left Kuwait by road through Saudi Arabia. A few travelled through Iraq to departure points in Iran and Jordan. Over 50 percent of Kuwaiti citizens are reported to have departed their country or to have been outside of Kuwait on 2 August. Those who entered Saudi Arabia benefited from relocation assistance provided by the Kuwaiti Government-in-exile and the Saudi Arabian Government. Others who were already outside of the country when the invasion occurred, are reported to have received similar relocation grants upon registration and proof of their Kuwaiti nationality. The Government of Kuwait instituted an intensive program to register all Kuwaitis outside of Kuwait, or who departed Kuwait, on or after 2 August 1990.

(f) **Pakistan**: Approximately 95 percent of Pakistani nationals resident in Iraq and Kuwait departed by the end of September 1990. An estimated 11,000 are reported to have stayed in Kuwait or Iraq, or in neighbouring Gulf countries, throughout the crisis. The first group of Pakistanis fled across the Kuwaiti-Saudi Arabian border, arriving in Jeddah from where they were flown home by their Government. However, over 50 percent of Pakistani nationals returned to Pakistan by making a month-long journey overland through Iraq, Iran and Turkey. Forty-six percent of the returnees were evacuated on Government planes, primarily from Jordan and Saudi Arabia, as well as Turkey, Iraq and Iran. A Government-chartered ship transported 2.8 percent of the returnees from Jeddah to Karachi. Only a fraction of Pakistani returnees made their way home with international assistance. The IOM-coordinated airlift carried about 4,900 Pakistanis home in the period between 3 September 1990 and 19 January 1991. The largest number, 4,260, flew home from Jordan while close to 600 left from Turkey and fewer than 100 from Iran. Upon their return, family heads were provided with a Rps.6,000 emergency grant and dependents travelling alone were given an allowance for inland travel and temporary accommodation.

(g) **Philippines**: Approximately 41,000 Philippine nationals left Iraq and Kuwait in August and September 1990. By 2 March 1991, only about 1,700 Filipinos were still in Kuwait, while some 3,000 had stayed in Iraq. Most Filipinos made their way to Baghdad, from where their embassy and IOM transported them, in the initial stages, to Saudi Arabia (1,960), but then later to Jordan. From transit camps in Jordan, IOM flights carried some 15,000 evacuees from 15 August 1990 onwards, to the Philippines. The Philippine Government funded the evacuation of around 14,000 of the Filipinos who returned. Several hundred were flown out of Turkey, Iraq, Iran and other Gulf countries. Most of them had to rely on their Government's repatriation programme and a UNICEF/OWWA Assistance Programme.

(h) **Sri Lanka**: Between August 1990 and March 1991, approximately 79,000 Sri Lankans returned to their home country. Reports indicate that some 5-6,000 Sri Lankans were unable to leave Kuwait, and that by October 1990 there were no Sri Lankans left in Iraq. Some 4,000 Sri Lankan nationals made their way home in August 1990 relying on their own resources since international assistance had not yet become available. Affluent Sri Lankans are reported to have flown home directly out of Baghdad, Jeddah and Riyadh. However, the majority of Sri Lankans were transported overland to Jordan by IOM-hired buses, and were flown from Amman (over 42,000) to Colombo on 123 IOM-coordinated air charters. A significant number were evacuated on IOM-coordinated flights from Basra (over 4,500), Riyadh (700), Ankara (300) and Teheran (50). About 20,000 Sri Lankans were repatriated on Government-coordinated charter flights from Amman, and 1,900 on ship charter from Aqaba. It is understood that 16,690 Sri Lankans were also evacuated on 57 charters sponsored by other countries and organizations. Returnees were provided with temporary accommodation, food and medical care, counselling and transport to their home areas, and could convert up to Rps 10,000 of any foreign exchange they may have salvaged (including Kuwaiti Dinars).

(i) **Sudan**: It is estimated that most of the Sudanese in Kuwait left as the crisis escalated. The majority of them travelled overland to Baghdad or Basra and then on to Jordanian border camps. Reports indicate that only 32,000 of the Sudanese departees actually returned to Sudan. Many of the Sudanese who fled Kuwait and Iraq managed to find new employment in the region. In the period before the international airlift began, the majority of Sudanese returned home on Government planes and Government-chartered ships from Jordan. The Government also transported its nationals from Saudi Arabia, Turkey, Iran and Syria. A substantial number of Sudanese travelled home on IOM-coordinated flights, chartered individually or jointly, with the EEC and UNDRO. Most of these flights left from Jordan, with a few from Turkey and other countries.

(j) **Vietnam**: While there were no Vietnamese in Kuwait before 2 August 1990, an estimated 16,000 Vietnamese nationals were working in Iraq before the invasion. In the first few months of the crisis, some 1,117 Vietnamese were stranded in Iraq under life threatening conditions. They were eventually evacuated by the Vietnamese Government either through Iraq or through Turkey and Jordan. Reports indicate that IOM evacuated 1,085 Vietnamese from Turkey in the period between 20 December 1990 and 15 January 1991. In approximately the same period, 4,564 Vietnamese were repatriated out of Jordan. The largest number of Vietnamese, over 7,500, were repatriated on flights directly out of Iraq. Approximately 16,000 Vietnamese are reported to have returned home from October 1990 to February 1991, with the assistance of the IOM, UNDRO, the European Community and the Governments of Turkey, Jordan, Iran, Japan and Egypt.

(k) **Europe and the Americas**: Argentina, Austria, Australia, Belgium, Brazil, Canada, Chile, Cyprus, the Czech Republic, Denmark, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the FYR of Macedonia, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Russian Federation, the Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom, the United States, the FYR (Serbia & Montenegro): following the invasion, almost all persons from these countries, and other European and Latin American countries, left Iraq and Kuwait by private means, or with the assistance of their governments, during the first two months of the invasion and occupation. The relatively small number who could not depart were those who had been detained, taken hostage, or who had been refused exit visas by the Iraqi authorities, particularly nationals from OECD countries.

(ii) Relocation and Dislocation Patterns

Iraq invaded Kuwait at the height of the Gulf summer. A considerable number of expatriates residing in Iraq and Kuwait, as well as Kuwaiti nationals, were away from their homes at the time. Most of those stranded were on vacation or home leave. Others had travelled abroad in connection with their businesses or employment, and in some cases to renew visas.

Unable to return to Iraq or Kuwait, these persons incurred a broad range of unforseen expenses, including costs associated with extended stays in hotels and other commercial establishments; food costs; clothing; local travel; telephone calls; automobile rental; apartment and furniture rental; school fees; medical bills, etc. Those stranded in countries other than their country of origin, or in which they could not or did not want to remain for an extended period of time, often had to spend considerable sums of money to travel to a location where they could await the outcome of events in Iraq and Kuwait under improved conditions.

In addition, a number of individuals were unable to depart Iraq or Kuwait or chose not to, for financial reasons, or because they were unable to obtain an exit visa, or they were in hiding, or because they were held hostage or illegally detained. These persons appear not to have incurred significant costs as a result of their inability to leave Iraq or Kuwait. The Kuwaiti Government has indicated that during the occupation, through its subsidized cooperatives, it made free food available to all residents in Kuwait, regardless of nationality. In addition, those who remained appear not to have paid rent during the seven-month period of the occupation.

2) Claims in First Instalment

a) Overview of Claims

The Panel estimates that over 30,000 category "C" departure and relocation claims have been filed with the Commission by approximately 60 countries. In the First Instalment, the Panel considered 773 of these claims from 13 countries. A statistical profile of these claims is provided in the table below:

NUMBER OF "C1" DEPARTURE CLAIMS IN FIRST INSTALMENT BY COUNTRY[131]

Country	Claims in First Instalment	Departure Claims	Decision Not to Return Claims	Inability to Leave or Return Claims
Australia	56	19	0	12
Bahrain	25	3	0	0
Bolivia	1	0	0	1
Brazil	12	2	0	0
Denmark	28	3	0	0
Kenya	1	0	0	0
Kuwait	1070	1	0	0
F.Y.R. of Macedonia	4	0	0	0
Malaysia	1	0	1	0
Nepal	3	2	0	0
Pakistan	1105	450	13	73
Poland	38	0	3	4
United Kingdom	187	24	0	1
United States	268	32	3	24
F.R.Y. (Serbia & Montenegro)	59	0	0	0
South Africa	2	0	0	2
TOTALS	**2860**	**536**	**20**	**117**

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[131] The figures in this table should not be totalled by row, as the numbers in the second column reflect also claims for C1-MPA.

b) Description of Claims

Departure and relocation claims appear to be among the most diverse claims before the Panel in terms of the factual bases underlying the claims, the amounts claimed and the items upon which the claims are based. Claims have been made for transportation, food, lodging, relocation, and other similar costs associated with a claimant's departure from, inability to leave or return, or decision not to return to, Iraq or Kuwait.

Transportation costs claimed for include expenses incurred for travel by car, bus, taxi or plane, from Kuwait or Iraq, to a point of first arrival; travel fare from the point of first arrival to the claimant's final destination; car rental for various lengths of time, for a variety of vehicles, and a broad range of rental rates; automobile insurance; fuel costs; repair costs; local travel; unused travel allowances, etc.

Costs for food claimed for include those incurred for food while in-transit to the claimant's final destination; those incurred by the claimant at his or her final destination; and those incurred during the claimant's return to Iraq or Kuwait following the withdrawal of Iraqi troops. The periods for which food costs have been claimed vary from 1 month (usually the month of August 1990) to 10 months.

Lodging costs claimed for include expenditure for lodging while in-transit to the claimant's final destination and then on arrival at that destination, in hotels, motels, etc. and for varying periods during the occupation of Kuwait; for apartment and house rental; for mobile home rental; for furniture; for utilities; for taxes; etc.

Relocation costs claimed for include a broad spectrum of items, including many of the items listed above; children's school fees; clothing; household effects; expenditure made while searching for new employment; loss of rental from property; personal loans and interest thereon; moving expenses, etc.

3) Processing Considerations and Methodology

a) General Considerations

In addition to the general considerations discussed above, several factors contributed to the Panel's processing methodology for departure and relocation claims, including: (a) applicable Governing Council guidelines and standards; (b) the comments of governments in response to relevant issues raised in reports issued pursuant to Article 16 of the Rules; (c) the characteristics of the claims; (d) the patterns observable in the evidence submitted in support thereof; and (e) the potential for overlap between departure claims under category "C" and those under category "A".

(i) Governing Council Guidelines and Standards

Decision 1, at paragraphs 14 and 18, sets forth several substantive criteria relevant to the compensation of departure and relocation claims that have implications for the processing methodology for such claims. Paragraph 14 states in pertinent part that compensation payments "are available with respect to . . . costs of departure, as a result of Iraq's unlawful invasion and occupation of Kuwait. The Commission will give expedited priority consideration to claims for such losses up to $100,000 per person."

Paragraph 18, setting forth several of the bases for Iraqi liability, provides in pertinent part that "[c]laims must be for . . . direct loss to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of . . . departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period . . . ."

(ii) Government Responses to Article 16 Reports

A number of governments, including the Government of Iraq, submitted comments in response to several relevant issues raised by the Executive Secretary in reports issued pursuant to Article 16 of the rules.

In the Second Report Issued Pursuant to Article 16, the Executive Secretary raised the following issue:[132]

> Claimants in Category "C" who have chosen not to return to Kuwait have claimed for certain relocation costs (e.g. mileage charges incurred in finding a new home, short-term residential rentals, car hire, and losses associated with buying or selling a house). The issue raised is to what extent such claims are to be considered as losses resulting directly from Iraq's invasion of Kuwait.

In the Fifth Report the following issue was raised:[133]

> A considerable number of Category "C" claimants indicate a departure from Kuwait or Iraq following the end of Iraq's occupation of Kuwait. The issue raised is to what extent these claimants are eligible to claim for departure-related costs, and/or relocation costs.

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[132] Article 16 Report No. 2 (S/AC.26/1993/R.1), at 9, para. 12.

[133] Article 16 Report No. 5 (S/AC.26/1993/R.26), at 14, para. 27.

(iii) Characteristics of the Claims

In excess of 30,000 departure and relocation claims have been filed with the Commission. Those included in the First Instalment, and in all likelihood those in future instalments, appear to be very diverse in several respects, including the items claimed, the factual bases underlying the claims, the amounts asserted by claimants for the various costs incurred and the manner in which claimants have calculated and stated their losses. To the extent that a pattern was discernible in the sample claims reviewed, claimants from the same country appeared to claim for similar items and amounts, reflecting perhaps the involvement of their respective governments in the preparation of their claims, the cost-of-living in their countries, and the fact that nationality was a critical factor in defining the departure and relocation experiences of individuals who fled Iraq and Kuwait. Thus, individuals from the same country often travelled by the same modes of transportation and by the same routes to similar destinations, and incurred similar costs reflecting these common patterns. The type and level of costs incurred also appear to have been a function of claimants' family status, and socio-economic background.

The sample claims further reflected the fact that a number of claimants experienced difficulty in preparing their departure and relocation claims.[134] Inadequate instructions regarding how to prepare their claim, and limited public and private means of assistance to claimants in the preparation of their claims, may have contributed to these difficulties. The format and instructions of the "C1" page of the claim form may also have influenced how claimants prepared their claims.

(iv) Evidentiary Patterns

Page "C1" of the claim form instructs claimants to "[a]ttach copies of bills, tickets, receipts or other documentation showing the amounts of [their] losses." It further states "[a]ttach a statement describing what happened to you. If you departed, the statement should include the address of your last residence and last place you worked in Iraq or Kuwait and describe how you travelled from the last place where you lived or worked in Iraq or Kuwait to your ultimate destination."

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[134] Among the most commonly observed difficulties were claimants' apparent misunderstanding of the distinction between a claim arising on the basis of a "decision not to return", and one arising on the basis of an "inability to leave or return". Those indicating the latter, rarely qualified, either on the form itself or in the attached documentation, whether the grounds for their claim was an inability to leave or an inability to return. In addition, claimants were not able to use the claim form to allocate clearly the costs they had incurred. Thus, even when claimants had distinguished the underlying bases for their claim, in a significant number of cases, the Panel was unable to ascertain which were the respective costs associated therewith. Further confusion is apparent in the manner in which claimants completed the fields for their dates of departure from and, if applicable, return to Iraq or Kuwait.

Pursuant to these instructions, the most common forms of evidence submitted by claimants were as follows: passport and visa stamps, including any one or a combination of the following -- entry stamp from Iraqi, Saudi Arabian, Turkish, Jordanian, Abu Dhabi, or Bahraini border authorities; exit stamp from any one or more of these countries; entry stamp into any country during the period of 2 August 1990 to 2 March 1991; ticket stubs or counterfoils, and boarding passes; receipts, credit card statements and vouchers, invoices, etc., for airline, bus, or ship tickets; travel itineraries; copies of airline, bus or ship passenger manifests; government or international organization record, certificate or letter, including emergency, temporary or substitute travel documents or identification papers issued by a consulate or embassy outside of Kuwait or Iraq; hotel or restaurant receipts, telephone or credit card statements or similar documentation indicating a date after 2 August 1990 and that those expenses were made outside of Kuwait or Iraq; personal and witness statements explaining the circumstances, dates and routes of the claimants' departure, and describing their relocation and dislocation experiences; and lists prepared by the claimant itemizing his or her losses. In several instances, claimants also submitted photographs of themselves at a border camp or on board an evacuation vessel.

In addition to the general factors discussed in Part II, section E., supra, the level, quality and type of evidence submitted by claimants appears to have been dictated by several factors, inter alia: (1) the urgency of the circumstances under which claimants left Iraq and Kuwait, and in particular, the fact that mass entry and evacuation was not conducive to the establishing and retaining of accurate records, either by the host governments or by the entrants themselves; (2) the fact that, at the time, claimants could not have anticipated that they would be required to produce documentation to support a claim based on the costs they had incurred; (3) it may not have been common practice in several of the countries through which claimants travelled en route to their ultimate destination for receipts to be provided, and claimants may not have asked for receipts for small sums of expenditures ; and (4) during the general dislocation experienced by claimants at the time, it is to be expected that documentation relevant to establishing a claim may have been lost. In addition, cultural and socio-economic factors are likely also to have had an impact on claimants' general inclination and ability to provide the evidence requested.

(v) Category "A" Claims

Decision 1 provides for the submission of a claim under category "A" by "any person who, as a result of Iraq's invasion and occupation of Kuwait . . . departed from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991." Claimants may submit an "A" claim for a fixed amount of US$ 2,500 per individual or US$ 5,000 per family, or they may submit a claim for a higher fixed amount of US$ 4,000 per individual or US$ 8,000 per family. If a claim is made for the higher fixed amount, claimants are not to submit a claim under any other claim category.

Under the criteria for category "A" claims, claimants filing an "A" claim for a fixed amount of US$ 2,500, may also file a "C" claim, but only to the extent that the amounts claimed on the "C" claim form are not for departure-related costs. This gives rise to the possibility of overlapping claims, and hence multiple compensation for the same loss, in that a claimant may have filed an "A" claim and at the same time have filed a claim on page "C1" for costs associated with his or her departure from Iraq or Kuwait.[135]

In an effort to limit the potential for multiple recovery by claimants who may have filed a claim under category "A", as well as a claim under category "C", the Panel has requested and has now been informed by the secretariat that, to the extent feasible, a cross-check of the claims in the two categories, is being performed. Using the computer and, in certain cases, manually, the cross-check is being performed (1) to identify "C" claimants who have filed an "A" claim and a "C1" departure claim, and (2) to identify "A" claimants who have filed for the higher fixed amount under category "A" and who have filed a "C" claim.[136] Subject to the careful review by the secretariat, the results of this cross-check which is on-going will be provided in due course to the Governing Council for its determination as to whether or not compensation recommended by this or other Panels should be adjusted or otherwise dealt with.

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[135] The criteria for category "A" claims give rise to a second possibility for multiple recovery: as noted, claimants submitting an "A" claim for the higher fixed payment of US$ 4,000 per individual (with a maximum payout of US$ 8,000 per family unit), are not to submit a claim under any of the other categories. There is thus the potential for multiple recovery in that an "A" claimant claiming for the higher fixed payment may also have submitted a "C" claim (or a category "B" or "D" claim).

[136] The Panel notes that the instructions to claimants on page "C1" of the claim form state: "[i]f you have made a claim for the fixed amount available on Claim Form "A" for damages arising from your departure from Iraq or Kuwait, you will not be able to file any other claim for losses resulting from your departure from Iraq or Kuwait under this or any other form. You may, however, claim for other losses in this section, as long as you can show that they resulted from circumstances other than your departure from Iraq or Kuwait." [Emphasis in the original].

In addition, the instructions on claim form "A" advise claimants as follows: "If you submit a claim on this form for the fixed amount of US$ 2,500, you will not be able to file any other claim for departure from Iraq or Kuwait. You may, however, claim on a different form [an asterisk directs claimants to the relevant forms, namely Claim Form "C" or Claim Form "D"] for other particular losses, if you can show that they resulted, not from your departure, but from one of the following circumstances: . . . military operation or threat of military action by either side during the period 2 August 1990 to 2 March 1991; . . . actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation of Kuwait; . . . the breakdown of civil order in Kuwait or Iraq during that period; or . . . hostage-taking or other illegal detention." Claimants are also notified that "[i]f you believe that your claim for departure is larger than US$ 2,500 and can be documented, and you wish to claim for the full amount, you should submit it on another claim form. . . .[an asterisk directs claimants to Claim Form "C" and Claim Form "D"]. Finally, in bold capitalized lettering, claimants are informed that "[i]f you and your family members agree not to file claims under any other form or category, you may use this form to claim an additional amount of US$1,500 (for a total of US$ 4,000 per person), and the limit for your family . . . will be raised to US$8,000." [All emphases in the original].

b) Methodology

Taking into consideration the fact that in excess of 30,000 departure and relocation claims have been filed with the Commission; the fact that these claims are extremely diverse; the fact that, in accordance with the Governing Council's mandate, urgent claims are to be processed on an expedited basis; and the potential for multiple recovery under category "A" and category "C", the Panel adopted a processing methodology entailing: (1) the grouping of claims presenting similar factual and legal issues; (2) the individualized review of sample claims from the relevant groupings; (3) the analysis of statistical data regarding the claims, and specifically the evidentiary patterns and amounts claimed; (4) the extrapolation of its findings with respect to sample claims to the non-sampled claims; and (5) additional verification of individual claims only when necessary.

c) Relevant Issues and Criteria

Decision 1 predicates compensation for departure- and relocation-related losses on proof that is the reasonable minimum under the circumstances for establishing that the claimant suffered losses due to departure from, an inability to leave, or a decision not to return to Iraq or Kuwait, during the period of 2 August 1990 to 2 March 1991, as a direct result of Iraq's invasion and occupation of Kuwait. Within the framework of its methodology, therefore, the Panel reviewed the claims to verify whether it could be ascertained that: (a) claimants were present or resident in Iraq or Kuwait prior to 2 August 1990; (b) the losses, or the events giving rise to the losses, took place during the period of 2 August 1990 to 2 March 1991; (c) claimants departed from Iraq or Kuwait during this period, if claiming for departure-related costs; and (d) their losses were causally related to the Iraqi invasion and occupation of Kuwait, including whether the items underlying the claim fall within the scope of allowable losses. The Panel also examined the claims to determine whether claimants had established the value of their claim.

In this regard, the Panel reviewed the evidence attached to individual sample claims taken from the First Instalment, statistical data regarding the patterns of evidence submitted with the claims, and specific background information relevant to assessing the materiality, relevance and weight to be accorded to the various evidentiary items submitted. With the secretariat's assistance, the Panel confirmed that the sample claims were representative of the total population of First Instalment departure and relocation claims.

(i) Fact of Residence or Presence

A threshold issue generally relevant to departure and relocation claims is whether claimants were present or resident in Iraq or Kuwait prior to the invasion. This issue has particular relevance for relocation-related claims. The facts giving rise to such claims typically involved claimants being outside of Iraq or Kuwait when the invasion occurred for a variety of reasons, including vacation-related travel, business travel, visa renewal; and inability to leave due to hiding, detention, injury, and economic hardship. Claimants who have established that they were present or resident in Iraq or Kuwait prior to 2 August 1990, prima facie may be considered to have provided evidence that the losses they suffered as a result of their inability to leave or return, or a decision not to return, to one of those countries, are directly related to Iraq's invasion of Kuwait. Proof of presence or residence by itself, however, is not dispositive of whether claimants' losses are within the scope of allowable losses.

As noted in Part IV.A., section 5, supra, the Panel determined that the information provided in the claim form and background information regarding the profile of the population in Iraq and Kuwait, in conjunction with the claimant's affirmation and that of his or her government, in the context of a mass claims processing program, is sufficient evidence to establish the fact of the claimant's residence or presence in Iraq or Kuwait prior to 2 August 1990, under the standards set forth in Decision 1 and Article 35 of the Rules.

In the First Instalment, all claimants for departure and relocation losses satisfied the Panel's criteria regarding the fact of their residence or presence, in Iraq or Kuwait, prior to the invasion.

(ii) Jurisdictional Period

Decision 1, paragraph 18, sets forth several of the bases for Iraq's liability. It states that Iraq is liable for "any loss suffered as a result of: (a) military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991; (b) departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period . . . . "

As discussed above, the "B" Panel found that "[t]he period between 2 August 1990 and 2 March 1991 . . . has considerable significance for the purpose of verification of claims arising from Iraq's invasion and occupation of Kuwait." For departure and relocation claims under category "C", this period is a paramount consideration, and as such, this Panel finds that the period 2 August 1990 to 2 March 1991 constitutes a specific jurisdictional limitation for such claims. Accordingly, claims for departure and associated relocation costs must be for a departure from Iraq or Kuwait (and not a third country) within the specified period of the occupation -- 2 August 1990 to 2 March 1991 (hereinafter the "jurisdictional period"). In addition, the circumstances giving rise to claims for losses as a result of an inability to leave or return, or a decision not to return, to Iraq or Kuwait, must have occurred during this period.

(iii) Fact of Departure within Jurisdictional Period

The Panel considered two issues specifically regarding departure-related claims: (1) whether claimants had established the fact of their departure from Iraq or Kuwait, and (2) whether the departure took place within the jurisdictional period. The Panel notes that, whereas proof of the fact of departure within the relevant period is a predicate for compensation, in contrast to category "A" claims, proof of this fact is not the sole basis upon which compensation for departure-related claims under category "C" is based: claimants in category "C" must also establish the value of their losses. Claimants under category "A", on the other hand, are entitled to a fixed compensation payment regardless of the actual amount of the losses incurred.

The Panel considered both of the above issues against a backdrop of inter-related factors. First, the facts regarding the exodus of persons from Iraq and Kuwait following the invasion of Kuwait have been well-documented by a number of sources, including several international bodies that were involved in the evacuation operations and authoritative independent sources. Numerous reports, discussed above, attest to the massive numbers of people who left Iraq or Kuwait as a result of the invasion, the urgency of the conditions under which they left, the various departure modes, routes and patterns of nationals from different countries, and the impact that the invasion had on their lives and livelihood.

Second, for a variety of reasons unrelated to the work of the Commission, governments and other entities have compiled statistics regarding the estimated number of departees from Iraq or Kuwait. In conjunction with statistical information on the number of people in those two countries prior to the invasion, the number of category "A" claims and the patterns observable in these claims, the number of category "C" departure-related claims, and information provided by several governments regarding the departure patterns of their nationals, these statistics provide relevant circumstantial proof of a claimant's departure from Iraq or Kuwait following the invasion.

Third, the instructions on the claim form request claimants to provide a statement describing their situation at the time of the invasion (i.e., "what happened" to them), and if they departed, where was their last place of residence or employment in Iraq or Kuwait, and by what means they travelled from there to their final destination. While claimants are instructed to provide the information requested in the form of a statement, this information was also often provided through other forms of documentation -- witness statements, lists itemizing the expenditures made, various forms of official documentation, travel documents, identification documents, and receipts. In almost every sample case reviewed, the Panel was able to observe factual assertions consistent with those provided in the various external reports it had consulted regarding the patterns and numbers of people who fled Iraq and Kuwait in the aftermath of the invasion. Thus, based on the considerable background information available to the Panel, a claimant was not prejudiced by virtue of the fact that an element of the information requested may have been missing in his or her particular case.

Fourth, the claim form also requests claimants to indicate the date on which they departed Iraq or Kuwait. In most instances, the Panel was able to verify from the information in the claim file that the date indicated was the actual date on which the claimant departed Iraq or Kuwait. Moreover, depending on the date indicated by the claimant, the Panel was able to assess the likelihood of a claimant's departure from Iraq or Kuwait, taking into account the various independent reports regarding departure patterns and flows of nationals from different countries.

Fifth, the Panel was able to take into consideration the fact that almost every departure claimant has submitted a claim under one of the other category "C" loss types, in most cases supported by documentation. Under the circumstances, and based on its review of the various sources of information (e.g., the claims, the attached documentation, and background sources of information) available in connection with those claims, the Panel regarded the filing of a claim for other losses, together with the relevant documentation, to be corroborative of the fact that the claimant departed Iraq or Kuwait.

Finally, the Panel took into consideration the relevant factors bearing upon the quality and type of evidence likely to have been submitted by claimants under the circumstances, which are discussed above.

(a) Fact of Departure

Accordingly, on the basis of the information available to the Panel either from the claim form, the documentation attached thereto, and/or various external sources, the Panel determined that, for the purposes of departure-related claims under category "C", sufficient evidence has been submitted to be considered the reasonable minimum under the circumstances as to the fact of a claimant's departure from Iraq or Kuwait during the relevant time period. In addition, the Panel took into consideration the fact that claimants under category "C" must satisfy an additional evidentiary requirement with respect to the costs being claimed.

(b) Relevant Period

As noted above, pursuant to Decision 1, paragraph 18, a claimant's departure from Iraq or Kuwait must have occurred during the jurisdictional period. A small number of claimants have indicated on their claim form dates of departure prior to 2 August 1990, and after 2 March

1991.[137] Regarding those claimants indicating dates of departure before the invasion, the Panel observed two distinct patterns in the sample claims reviewed: (1) claimants who were outside of Iraq or Kuwait prior to the invasion, and who, in addition to making a departure claim, also made a relocation-related claim; and (2) claimants who departed prior to the invasion, but indicated only that they were making a departure-related claim.

As to the few claimants who indicated that they departed after 2 March 1991, in each case the Panel observed that the claimant alleged that he or she had been detained by the Iraqi authorities either in Iraq or Kuwait, and that he or she was not released from captivity until after that date.

In light of the foregoing, the Panel finds that departure claimants, with a verified date of departure prior to the invasion, are not eligible to be compensated for the costs incurred in connection with their departure. Such claimants, nevertheless, may be entitled to compensation for allowable costs associated with their relocation or dislocation as a result of Iraq's invasion of Kuwait.

The Panel further finds that claimants indicating a date of departure after 2 March 1991 are not precluded from receiving compensation for their departure and relocation losses, if they are able to establish the presence of "special circumstances", such as an inability to depart Iraq or Kuwait due to being held hostage, or otherwise detained by the Iraqi authorities. The Panel notes that other "special circumstances" may exist entitling a claimant to compensation for his or her losses, notwithstanding the fact that he or she may not have departed Iraq or Kuwait until after 2 March 1991.

(iv) Causal Relationship to Invasion of Kuwait

The language of Decision 1, paragraph 18, raises two aspects of the issue concerning the causal relationship between claimants' losses and Iraq's invasion and occupation of Kuwait. Paragraph 18 provides in pertinent part that "[c]laims must be for . . . direct loss to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of: . . . (b) departure from or inability to leave Iraq or Kuwait (or a decision not to return) during [the jurisdictional period]." The issue of causality, therefore, is raised in connection with whether the losses suffered resulted from Iraq's invasion and occupation of Kuwait, and whether Iraq should be held liable for the entire range of departure and relocation costs incurred by a claimant.

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[137] The Panel notes that the instructions for claim form "A" specifically indicate that compensation is limited to only those "who departed from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991." The instructions on the "C1" page of the "C" claim form, however, do not expressly state these date limitations. The lack of instructions may explain in part why claimants indicated dates of departure outside of the jurisdictional period.

As a threshold matter, the Panel finds that the losses suffered by relocation claimants who have established the fact of their residence in Iraq or Kuwait prior to the invasion and by departure claimants who have established the fact of their departure from Iraq or Kuwait within the relevant time period, resulted directly from Iraq's invasion and occupation of Kuwait.

As described above, however, claims have been submitted for a wide variety of costs incurred in connection with claimants' departures from, inability to leave or return to, or decision not to return to, Iraq or Kuwait. On the basis of the sample claims reviewed, expenditures made by claimants for similar items while departing, or as a result of not being able to return to their homes, often vary significantly in terms of the amounts spent, and the items or services purchased. In a significant number of cases the costs were incurred after 2 March 1991.

Particularly in connection with those costs associated with claimants' relocation or dislocation, an issue thus is raised as to the scope of the costs for which Iraq may be considered directly liable, and for which claimants may be entitled to compensation. The attenuation of the costs incurred by claimants, and Iraqi liability for those costs, is all the more relevant in light of the implication contained in Decision 1, paragraph 18, that Iraq's liability is circumscribed by events that occurred during the jurisdictional period.

The Panel finds that departure-and relocation-related costs may be considered compensable losses resulting directly from the invasion and occupation of Kuwait only to the extent that they are temporary or extraordinary expenses. These would include a broad range of departure-related costs, such as travel fares, lodging and food while in-transit; local transportation; and relocation-related costs, such as mileage costs incurred in locating a new residence, costs of moving to a new residence, short-term residential rental, short-term furniture rental, and short-term automobile rental.

Expenditures incurred in connection with the claimant's departure during the jurisdictional period, are presumptively related to Iraq's invasion and occupation of Kuwait. However, relocation-related costs that are not temporary and extraordinary in nature may not be compensated. Thus, on-going ordinary living expenses which would have been incurred in any event, e.g., normal telephone charges, dental expenses, cable television service, school fees, etc., are not compensable. Losses associated with buying or selling a house, e.g., real estate agent fees, are not relocation costs because they are inherent in a transaction which is of a permanent, rather than a temporary, nature. Loss of income from rental property due to personal occupancy of the property is not considered a relocation cost. In this case, the owner of the property has the benefit of occupying the residence; there has, in consequence, been no real economic loss. Replacement costs for items which are also claimed as personal property losses are not regarded as valid relocation costs. While it may be presumed that costs incurred after 2 March 1991 are not of a "temporary or extraordinary" nature, the mere fact that the expenditure was incurred after this date does not necessarily preclude claimants from being compensated therefor.

(v) Proof of Value of Loss

The Panel also reviewed the claims and attached documentation to ascertain whether claimants had established the amount of their claim in light of the standards established in Decision 1. As discussed above, claimants submitted a wide variety of evidentiary items in support of their claims, and in several cases documentation that was far in excess of the reasonable minimum. Under the circumstances, however, the majority of claimants were unable to provide documentary proof for the full amount of their losses, or the items of proof submitted were not directly relevant to proving the value of the claimants' losses. Moreover, in light of the factors discussed in section 3)a)(iv), supra, the Panel was unable to evaluate the amounts claimed with sufficient accuracy on the basis of the evidence submitted.

Thus, while the evidence reviewed enabled the Panel to conclude that claimants had incurred costs for which they were eligible to receive compensation, for the majority of claimants the Panel was unable to value their losses, and thus determine the amount of compensation awardable, solely on the basis of the evidence submitted.

d) Valuation

In light of the various characteristics of departure and relocation claims discussed in the foregoing sections, and specifically the complications involved in using the evidence submitted for the purposes of valuing claimants' losses within the context of a mass claims processing methodology, the Panel determined the amount of compensation awardable to claimants with reference to an "average" calculated on the basis of the amounts claimed.

Experts in statistics and mass claims processing advised the Panel that an intrinsic characteristic of a numerical average is its tendency to reflect a pattern of normalcy for the population on which the average is based. For example, while an individual claimant may have overstated his or her claim, on average, it is unlikely that all claimants in the population will have overstated their claims. Similarly, whereas all of the relevant limitations regarding the scope of recoverable costs are unlikely to be properly reflected in each claim, an average calculated on the basis of the amounts claimed by all claimants in the population is likely to reflect these scope limitations. An average calculated on the basis of the patterns in the claims, also has the added quality of ensuring that factors likely to have conditioned the amount claimed by an individual claimant, such as similarities in departure experiences, cost-of-living, social and cultural background, are reflected in the compensation awarded. Thus, within the parameters of a mass claims processing methodology, and particularly where the documentary proof may not be fully relevant to establishing the amount claimed, an average calculated on the basis of the amounts claimed may be used to indicate a "presumption of normalcy" upon which the Panel could rely to determine the amount of compensation awardable.

Accordingly, relying on the patterns observed by the Panel in the claims, the secretariat calculated an average amount claimed for similarly situated claimants using the line item amounts claimed for transportation, food, lodging, relocation and other costs. The Panel thus was provided with an objective standard against which to evaluate the amounts claimed for those items. In calculating the averages for relevant groupings of claimants, variations in the costs incurred due to differences in departure patterns, cost-of-living, cultural and socio-economic background, family size, and type of claim were taken into account. It is significant that, in order to ensure that claimants did not receive compensation for costs deemed "disallowable costs" within the parameters established by the Panel, the averages were calculated after filtering out such costs from the amounts claimed.

The amount claimed by each claimant was compared with the applicable average for that claimant. Based on the qualities that each average was expected to reflect, claimants who had claimed an amount lower than the relevant average were deemed by the Panel to have claimed an amount that could be considered "reasonable" in light of what other claimants had claimed, and were, therefore, awarded compensation in the claimed amount.

While, in general, the departure, relocation and dislocation experiences of similarly situated persons are likely to have been the same, certain claimants will have incurred costs outside of the norm reflecting their unique circumstances and characteristics. Accordingly, based primarily on the fact that there are a relatively small number of departure and relocation claims in the First Instalment, where the amount for which a claimant has claimed was above the applicable average for that claimant, the Panel reviewed the claim individually. Taking into consideration the Governing Council's guidelines that claimants filing claims for higher amounts may be subjected to a higher level of evidentiary scrutiny, the Panel determined that these claimants could be compensated the amount claimed to the extent that this amount could be supported by documentary proof. Where the evidence in support of the claim was deemed insufficient by the Panel, the Panel calculated the compensation awardable on the basis of the average applicable to that claimant.

Finally, to the extent possible and where ascertainable from the claim form or from information provided by governments, the Panel deducted the amounts paid to individual claimants by their governments or other entities to assist the claimant with his or her relocation, from the amount of compensation awarded by the Panel.

Based on the foregoing considerations, the Panel reaches the compensation recommendations for "C1" departure and relocation losses referred to in Part V and the Annexes, infra.

b. Claims for Mental Pain and Anguish Resulting from Hostage-Taking, Illegal Detention or Forced Hiding

Pursuant to Decisions 1, 3 and 8, a claimant may be compensated for mental pain and anguish ("MPA") resulting from being taken hostage or illegally detained for more than three days; for being taken hostage or illegally detained for a period of three days or less in circumstances indicating an imminent threat to the claimant's life; and for being forced to hide on account of a manifestly well-founded fear for his or her life, or of being taken hostage or illegally detained. Claims for MPA arising from the above circumstances may be submitted on page "C1" of the claim form.

The Panel's factual, legal and processing considerations regarding MPA claims under this loss type (hereinafter "C1-MPA" claims) are set forth below, as are the substantive criteria applied by the Panel to verify and compensate such claims in the First Instalment.

1) Summary of Relevant Facts

Within hours of entering Kuwait, Iraqi forces seized control of the country, closing all ports and the airport, banning foreign travel, imposing a curfew and cutting off the country from international communications. From the outset, the Iraqi authorities are reported to have implemented a programme of detention, torture and summary execution in an effort to quell or discourage resistance.[138] Arbitrary arrests and detention of civilians became a common feature of daily life. Those unable to depart the country often felt it necessary to go into hiding at various times and for varying periods in response to the situation in Kuwait and the changing political climate in the region.

Following a fact-finding mission to Kuwait, the Special Rapporteur of the United Nations Commission on Human Rights concluded: "Between the second half of August 1990 and the middle of February 1991, large numbers of civilians in Kuwait were arrested and detained by Iraqi forces." Predominantly, these persons were Kuwaiti citizens or bidoun ("stateless persons"). Palestinians, Egyptians, Jordanians, Saudi Arabians, Syrians and nationals of OECD countries are also reported to have been arrested and detained.[139] According to the Kälin Report, persons were arrested when Iraqi intelligence and army personnel came to their homes looking for them; at checkpoints set up by Iraqi forces; or during systematic searches of houses in certain districts of Kuwait City or other towns, especially when leaflets, communications equipment or weapons were found. Others were detained in public places after being identified as wanted persons.[140]

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[138] Kälin Report, at 22, para. 81. While the Kälin Report served as the principal source of facts for the Panel's deliberations, the Panel also considered factual information contained in the submissions made to the Commission by several governments, as well as verifiable information provided in the claims themselves.

[139] Id., at 22, 23, para. 90.

The Kälin Report as well as information provided by governments indicate the following principal reasons for the arrests: (1) belonging to the Kuwaiti army and police force or holding important posts in the Kuwaiti administration; (2) being engaged in armed activities of the resistance; (3) possessing arms or ammunition; or (4) being involved in non-violent resistance, including expressing opposition to the invasion and occupation, by writing graffiti, by possessing and distributing tracts and leaflets, by providing food and medical assistance, or by refusing to exchange Kuwaiti identification documents or automobile licence plates for Iraqi ones.[141] In some instances, the motives for the arrests and detention of persons were arbitrary and unclear.[142] Relatives or friends of suspects often were detained together with the suspect or in lieu of that person.[143]

In most cases, detained persons were first brought to sites established as detention centres, such as police stations, school buildings or abandoned houses taken over by the Iraqi occupying forces where they generally underwent a first interrogation.[144] The Kälin Report notes that while some of the detainees were released after a few days,[145] most of them were transferred to more permanent prisons and detention centres in Kuwait where interrogation continued. Interrogation focused on the activities either of the persons arrested or of their friends and relatives. According to the Kälin Report, often interrogation was accompanied by torture.[146] Detainees also are reported to have been deported to Iraq.[147] A considerable number of such persons are still missing and their current status is unknown.[148]

Although no precise numbers are available, the Kälin Report states that:

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[140] Id., at 22, para. 82.

[141] See e.g., Kälin Report at para. 83.

[142] Id.

[143] Id., at para. 84.

[144] Annex I to the Kälin Report contains a list of places in Kuwait where persons were detained or tortured.

[145] Id., at 23, para. 85.

[146] Id.

[147] Id.

[148] Id., at 38-43, paras. 144 to 159.

> The total number of persons arrested during the time of the ongoing occupation . . . might have reached several thousands, a substantial number of whom were deported to Iraq. An unknown number of persons were only temporarily detained and released from detention sites both in Kuwait and Iraq before 26 February 1991. In this regard it should be noted that reports concerning short-term detentions were numerous. These reports are corroborated by the fact that the number of detention sites throughout Kuwait during Iraqi occupation was extensive . . . allowing for waves of short-term detention of large numbers of persons at any given time.[149]

After 19 February 1991, and for several days thereafter, a second phase of mass arrests and detentions took place concurrent with Iraq's withdrawal from Kuwait.[150] The arrests were carried out at check-points or in front of mosques. Male Kuwaiti citizens of all ages are reported to have been detained.[151] According to the Kälin Report, approximately 2,000 Kuwaiti men were arrested on 19 February 1991 and during the following days.[152] Most of these persons were deported to Iraq.[153]

Well aware of Iraqi actions, many persons who stayed in Kuwait during the occupation were forced to hide to avoid arrest or interrogation, and the reported torture or physical and mental abuse that often accompanied these events. Persons of political or financial stature, as well as persons involved in the resistance movement, their families and friends, along with certain other categories of persons were particular targets of Iraqi aggression, and therefore, were forced to hide.[154] Women of all ages and nationalities also were forced to hide for fear of being sexually assaulted or abused.[155]

Among third-country nationals in Kuwait, the Kälin Report notes that the principal target of arrests and detention were nationals of member states of the Organization for Economic Cooperation and Development (OECD). On or about 16 August 1990, OECD nationals were ordered to report to the Iraqi authorities.[156] Subsequently, a number were deported to Iraq and obliged to remain there. The Kälin Report estimates that several hundred third-country nationals, mainly from OECD countries, including women and children, were deported from Kuwait to Iraq and forced to stay there for several months.[157] Together with an unconfirmed number of persons from various countries who had been resident in Iraq, many of these persons were detained at strategic sites and used in Iraq's "human shield" programme, in some cases until December 1990.[158] Other foreigners, principally of Western origin, but also women and children of all nationalities, and persons with connections to the Kuwaiti security forces or certain "strategic" industries and professions (e.g., the oil industry, health professionals) hid in Kuwait or lived there under false identity.[159]

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[149] Id., at 24, para. 93(b).

[150] Id., at 23, paras. 88-99.

[151] Id., at 88.

[152] Id., at 24-25, para. 93(c).

[153] Id., at para. 93(c).

[154] Id.

[155] Id.

[156] Id., at 23-24, para. 90.

Third-country nationals resident in Iraq also were subject to the Iraqi orders, and hence, also had reason to hide. A considerable number of expatriates reportedly were prevented from leaving the country by being refused exit visas, although they enjoyed relatively unimpaired mobility within Iraq.

2) Claims in First Instalment

Based on information submitted by several governments, and the secretariat's estimates, the Panel expects to process in excess of 130,000 claims for MPA in connection with hostage-taking, illegal detention and forced hiding. The majority of these claims will be for MPA resulting from forced hiding. In the First Instalment the Panel considered 521 claims for C1-MPA.[160]

A statistical profile of the C1-MPA claims in the First Instalment is set out in the table below.

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[157] Id., at para. 93(b)-(d).

[158] Id., at 23-24, para. 90

[159] Id.

[160] Some of these claimants have claimed for MPA from both a period of forced hiding and a period of detention. The claims considered in the First Instalment include 60 C1-MPA claims that were originally filed under category "B". These claims were transferred to category "C" by the Executive Secretary pursuant to a request by the "B" Panel. See n. 8 and accompanying text.

NUMBER OF "C1" MPA CLAIMS IN FIRST INSTALMENT BY COUNTRY			
Country	**Number of Claims**		
	Forced Hiding	**H.T. or I.D. (more than 3 days)**	**H.T. or I.D. (less than 3 days)**
Australia	13	4	2
Bahrain	23	-	-
Denmark	7	4	-
France	2	3	-
Japan	5	-	-
Jordan	1	5	-
Kuwait	81	37	-
Pakistan	48	66	6
Poland	1	1	-
United Kingdom	86	67	-
United States	84	50	-
TOTAL	350	237	8

H.T. = Hostage Taking **I.D. = Illegal Detention**

3) Processing Considerations and Methodology

a) General Considerations

(i) Governing Council Guidelines and Standards

Decisions 3 and 8 provide the substantive framework for evaluating and compensating claims for MPA in connection with being taken hostage or otherwise illegally detained, and for being forced to hide.

Pursuant to Decision 3, a person is entitled to compensation for MPA if: (1) he or she was taken hostage or illegally detained for more than three days; or (2) he or she was taken hostage or illegally detained for three days or less in circumstances indicating an imminent threat to his or her life; or (3) on account of a manifestly well-founded fear for his or her life or of being taken hostage or illegally detained, the claimant was forced to hide for more than three days.

Claimants who have established that they fall within one of the above categories, are presumed to have suffered mental pain and anguish as a result of the circumstances and conditions described. Accordingly, claimants are not required to prove specifically the scope and extent of their mental pain and anguish.

Decision 3 further provides that the terms "detention" and "detained" should be interpreted in a "restrictive manner." Specifically, the Governing Council has stated that these terms are used to mean "the holding of persons by force in a particular location by Iraqi authorities."[161] The phrase "manifestly well-founded fear" also is to be interpreted in a "restrictive manner," and should be taken to mean a "fear based upon clear indications that Iraqi authorities were seeking to kill or detain the individual in question or some group of which he or she was a member."[162] Only persons who were detained or hiding in Iraq or Kuwait are eligible for compensation.

With respect to the compensation payable to eligible C1-MPA claimants under the terms of Decision 8, the Governing Council adopted the following criteria and ceilings:[163](1) For being taken hostage or for illegal detention for more than three days, US$ 1,500 per claimant plus US$ 100 for each day taken hostage or illegally detained beyond three, up to a ceiling of US$ 10,000 per claimant; (2) for being taken hostage or for illegal detention for three days or less, US$ 1,500 per claimant; and (3) for forced hiding in Iraq or Kuwait, US$ 1,500 per claimant for the first three days, plus US$ 50 for each day the claimant was forced to hide beyond three, up to a ceiling of US$ 5,000 per claimant. These amounts are payable cumulatively where more than one situation applies to a claimant. The amounts payable are subject to the overall ceilings applicable to compensation payments for MPA under Decision 8.[164]

(ii) Government Responses to Article 16 Reports

Several Governments, including the Government of Iraq, submitted comments to the following issue raised by the Executive Secretary in the Fifth Report Issued Pursuant to Article 16 of the Rules:

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[161] Decision 3, para. 4.

[162] Id., para. 5.

[163] Decision 8.

[164] In Decision 8, the Governing Council established an overall ceiling for the amount payable to a claimant or to a family unit for MPA. The ceilings are US$ 30,000 per claimant and US$ 60,000 per family unit.

> A number of claimants have put forward claims in Category "C" for compensation for being forced to hide solely on the basis of the occurrence of the invasion of Kuwait and the presence of Iraq's army, without providing any other evidence. The issue is what evidence claimants should be required to provide as a clear indication of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained.

The Panel has carefully considered the responses received from Governments including the Government of Iraq.

(iii) Evidentiary Patterns

The claim form instructs claimants to "[a]ttach appropriate evidence documenting" the circumstances surrounding their hostage-taking, illegal detention or forced hiding. It also requests claimants to attach a statement describing what happened to them.

In response to these instructions, the majority of claimants submitted some form of personal statement, of varying length and detail, relating why they went into hiding and/or where the hid; where and how they were detained or arrested and/or by whom; and when they were released. A number of claimants also submitted witness statements in support of their claims. Generally, these statements indicate the basis for the witness' knowledge of the facts attested to, and the witness' relationship to the claimant. The Panel observed that in a number of instances witnesses had simply signed the allegations contained in the claimant's statement, and/or that the witness appeared to be related to the claimant. With respect to the latter observation, the Panel concluded that the fact that the claimant and the witness may be related was not extraordinary, particularly under circumstances involving detention or hiding, where family members are likely to have been the only witnesses available to testify to the relevant facts. Medical statements describing the treatment being received by the claimant for MPA as a result of being taken hostage, illegally detained or forced to hide, were submitted by several claimants.

Claimants also provided information in their claim form and attached documentation relating to other losses on the "C" claim form, that enabled the Panel to assess the likelihood that the claimant was held hostage or otherwise detained by the Iraqi authorities, or that he or she may have been forced to hide. For example, claimants indicating that they were somehow connected to the Kuwaiti defence sector, or that they were a medical professional, or that they were in a location where persons are known to have been detained, provided relevant information which enabled the Panel to conclude reasonably that the claimant's assertions with respect to his or her detention or hiding, in all likelihood could be substantiated. The various factual reports considered by the Panel in connection with claims under this loss type served to buttress the information provided by claimants in support of their claim.

Certain governments or organizations, particularly the governments of OECD member states and of Kuwait, made an effort to determine which of their nationals had been unable to leave Iraq or Kuwait, and to ascertain who had been taken hostage by the Iraqi forces. Following Kuwait's liberation, some of these governments and organizations issued certificates or attestations -- principally for the purpose of providing evidentiary support for hostage-taking claims -- to persons they determined had been taken hostage or illegally detained by the Iraqi forces. A number of claimants submitted such attestations or certificates with their claims. In addition, at the Panel's request, several governments submitted lists of persons considered by the respective government to have been taken hostage or illegally detained by the Iraqi authorities.

While the instructions to claimants on the "C1" page request that claimants explain the circumstances surrounding their hostage-taking, illegal detention, or forced hiding, they do not specifically instruct claimants to provide supporting documentation in respect of the number of days they were in captivity. Thus, the evidence submitted typically relates to the fact that the claimant was held hostage or illegally detained, or to the fact that the claimant has suffered MPA as a result of being taken hostage or illegally detained, but does not always help to substantiate the number of days the claimant has indicated he or she was a hostage, detained, or forced to hide.[165]

b) Methodology

Taking into account the relatively small number of C1-MPA claims in the First Instalment, the criteria set forth in Decisions 3 and 8, the characteristics of the claims, and the evidence in support thereof, the Panel adopted a methodology entailing the individual review of claims and of the attached documentation. In this regard, the Panel examined sample claims from each of the three C1-MPA loss categories. On the basis of these claims and relevant background material considered by the Panel, the Panel adopted criteria and guidelines giving effect to the conditions for compensation set forth in Decisions 3 and 8. The criteria were applied to the claims by the secretariat, and the results thereof were verified and approved by the Panel.

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[165] The Panel notes that the Decision 8 formula for compensating eligible C1-MPA claimants was not pronounced until after the claim form was issued and submitted by claimants from certain countries. Certain claimants, therefore, may not have had a basis for knowing that they had to document specifically the number of days they were held hostage or detained. At the same time, the fact that the compensation formula of Decision 8 was issued at a later time means that at least a significant number of the claimants entered the relevant number of days without knowing that it could have direct relationship to the compensation that may be awarded.

The extent to which the methodology adopted by the Panel for the claims in this First Instalment will require development or modification, will depend in large part on the characteristics and number of C1-MPA claims in future instalments.

c) Relevant Issues and Criteria by Loss Element

(i) Fact of Presence in Kuwait or Iraq

Decision 3 provides that only persons taken hostage or illegally detained in Iraq or Kuwait, or who were forced to hide in Iraq or Kuwait, during the course of the invasion and occupation, are eligible to be compensated for MPA on these grounds. Proof of the claimant's presence in Iraq or Kuwait during this period thus was considered by the Panel to be a threshold requirement for C1-MPA claims. As noted above, all claimants in the First Instalment were found by the Panel to have satisfied the relevant criteria with respect to proof of their residence or presence in Iraq or Kuwait.

(ii) MPA Claims for Hostage-Taking or Illegal Detention for More Than Three Days

Pursuant to the applicable Governing Council guidelines, the Panel considered two issues in connection with claims for hostage-taking or illegal detention for more than three days: (1) whether claimants had established that they were held hostage or illegally detained, and (2) how to ascertain the number of days claimants were retained in captivity.

(a) Fact of Being Held Hostage or Illegally Detained

Regarding the first of these issues, the Panel determined that claimants may be considered to have established the fact of having been held hostage or illegally detained if: (1) information provided by a government confirms that the claimant was held hostage or illegally detained; or (2) the claimant has alleged specific circumstances or events relevant to his or her detention or hostage-taking; or (3) sufficient information is available from the claim form, the attached documentation, submissions by governments, or relevant external information, to enable the Panel to ascertain the location from which the claimant was taken hostage or illegally detained, the date the claimant was taken hostage or illegally detained, the specific identity of the claimant's captors, or the date the claimant was released from captivity.

In order to give effect to the requirement set forth in Decision 3 that the terms "detained" and "detention" be interpreted restrictively, the Panel further finds that it should be apparent from the available evidence that the claimant was confined to a particular location or locations within

Iraq or Kuwait as a result of acts or actions by officials, employees or agents of the Government of Iraq or its controlled entities, involving some form of force or coercion, or the threat thereof. Thus, claimants alleging that because of the threat of force they remained within the compounds of an embassy or consulate, hotel, building, etc., will be considered to have satisfied the standards for hostage-taking or illegal detention. The claimant need not have been held or detained in one location to meet this standard.

However, in light of the restrictive interpretation to be given to the terms "detention" and "detained", the Panel does not consider claimants who have indicated that they were prevented from leaving Iraq or Kuwait because they were unable to obtain an exit visa, or due to logistical or financial reasons, to have been held hostage or illegally detained within the terms of Decision 3. Furthermore, claimants alleging that they remained at home because the Iraqis set up a check point in the general vicinity of their home, may not be considered to have satisfied the standards for hostage-taking or illegal detention. They may, nevertheless, be entitled to compensation for forced hiding if found to have satisfied the applicable criteria defined by the Panel for such claims.

(b) Number of Days

The Decision 8 formula for compensating claimants found to have been held hostage or illegally detained for more than three days is based on the number of days the claimant was held captive. Thus, claimants are requested to indicate the number of days they were held hostage or illegally detained on the claim form. Taking into consideration the factors discussed above, and particularly the fact that claimants were not requested specifically to prove how long they were held hostage or illegally detained, and the inherent difficulty of proving the actual number of days the claimant may have been held captive,[166] the Panel accepted the number of days asserted by the claimant on the claim form, to the extent that this number is not contradicted by other available information.[167]

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[166] The claim form states "[i]f you were taken hostage or illegally detained for more than three days . . . [h]ow many days?" The Panel observed that some claimants apparently interpreted the question regarding the number of days as "how many days above three days?" they were held hostage or illegally detained. These claimants thus deducted three days from the actual number of days they were kept in captivity, whereas, in fact, the available evidence suggested that they were held captive for a period longer than three days. Where such a misinterpretation was clearly evident to the Panel, the claimant was credited with three days in addition to the number of days indicated.

[167] For example, the number of days a claimant alleged he or she was held hostage, illegally detained or forced to hide was routinely cross-checked against the date the claimant may have indicated that he or she departed Iraq or Kuwait. If necessary, the number of days for purposes of calculating the claimant's C1-MPA compensation was adjusted to conform to the claimant's asserted departure date.

(iii) MPA Claims for Hostage-Taking or Illegal Detention for Three Days or Less in Circumstances Indicating an Imminent Threat to the Claimant's Life

In addition to proof of the fact that the claimant was held hostage or illegally detained, Decision 3 requires persons claiming that they were held hostage or illegally detained for three days or less, to have been held or detained under "circumstances indicating an imminent threat to his or her life" for their claim to be compensable. The Governing Council left it to the Panel to determine what circumstances may be taken to indicate an imminent threat to the claimant's life. Accordingly, based on a review of the claims and the facts alleged therein, and in particular, relying on the findings made in the Kälin Report, the Panel identified certain categories of claimants where circumstances indicating an imminent threat to the claimant's life may be presumed to have been present. They include: (1) claimants who were detained and used in Iraq's "human shield" programme; (2) claimants indicating that they or a family member are a national of a country specified in relevant directives or orders issued by the Iraqi Revolutionary Command Council, or known to have been the target of actions by officials, employees or agents of the Government of Iraq or its controlled entities; (3) claimants who were held hostage or detained at a location where detainees were tortured or where executions were carried out;[168] and (4) claimants indicating that they or a family member are a member of, or were connected to, the Kuwaiti royal family, armed forces, government, resistance movement or police force, or that they were, or a family member was, a political figure or a high ranking official in the Kuwaiti Government, prior to or during the invasion and occupation of Kuwait, as the case may be.

The Panel notes that the above categories of claimants are not exclusive. Thus, claimants who allege specific events or circumstances that indicate an imminent threat to their life, occurring during the period they were held hostage or illegally detained, also are entitled to compensation.

(iv) MPA Claims for Forced Hiding

Decision 3 states that persons claiming for forced hiding must prove that they were forced to hide on account of "a manifestly well-founded fear for their lives or of being taken hostage or illegally detained." Specifically, to be eligible for compensation for forced hiding, a claimant must establish that he or she was forced to hide due to a "fear based upon clear indications that Iraqi authorities were seeking to kill or detain the individual in question or some group of which he or she was a member."

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[168] See e.g., Kälin Report, Annex I.

(a) Proof of a Manifestly Well-founded Fear

The Governing Council has provided no specific guidance as to the circumstances in which a claimant may be considered to have had a manifestly well-founded fear. As a general proposition, however, the Panel notes that the mere presence of Iraq's army in Kuwait does not establish that a particular claimant went into hiding due to a manifestly well-founded fear for his or her life or of being taken hostage or illegally detained.

The Panel acknowledges that the very nature of the act of hiding renders proof or corroboration difficult, if not impossible, in certain instances. The focus of the issue here, however, is not so much on the fact of hiding or the fear itself. Given the conditions on the ground in Kuwait and Iraq during the occupation, the fact that persons in those two countries often went into hiding, and did so out of fear, can be presumed. Pursuant to Decision 3, the focus is more on the basis for the claimant's fear. The experience of fear, however, is necessarily subjective and internal to the claimant and, consequently, susceptible of proof primarily on the basis of the claimant's own testimony. Within the present context, independent verification of a claimant's alleged well-founded fear is not available. Nevertheless, certain objective circumstances or extrinsic indicators may be identified that might reasonably be presumed to have led claimants to have had a well-founded fear for their lives or of being taken hostage, and the presence of which, if observable in the information provided by a claimant, taken as proof of a "manifestly well-founded fear" for the purposes of Decision 3. For example, it was well-known to persons who remained in Kuwait during the occupation that Iraqi forces had issued arrest warrants and lists of wanted persons, and were also indiscriminately rounding up persons for interrogation. In particular, on or about August 16, 1990, the Iraqi authorities ordered the arrest of nationals of OECD member states and their detention as "human shields" at strategic sites in Kuwait and Iraq. A second phase of mass arrests took place after 19 February 1991, during which the fear of arrest, detention and torture, and hence the necessity to hide, became particularly acute. It was also well-known that persons detained, in many instances, underwent torture and severe interrogation for several days, and that women of all ages and nationalities had been sexually assaulted.

Based on a review of the claims and, in particular, relying on the findings made in the Kälin Report regarding the conditions in Kuwait and Iraq at the time of the invasion and occupation, the Panel identified certain categories of persons who could be considered to have been forced to hide on account of a "manifestly well-founded fear" for their lives or of being taken hostage or illegally detained. These so-called "forced hiding conditions" include:

1) The claimant or a family member is a national of a country specified in relevant directives or orders issued by the Iraqi Revolutionary Command Council, or is a national

of a country known to have been the target of actions by members of the Iraqi armed forces, or officials, employees or agents of the Government of Iraq or its controlled entities, during the period 2 August 1990 to 2 March 1991, in connection with the invasion and occupation of Kuwait;

2) The claimant indicates that he or she or a family member was a member of, or was connected to, the Kuwaiti royal family, armed forces, resistance movement or police force, or that he or she or a family member was a political figure or a high ranking official in the Kuwaiti Government, prior to or during the invasion and occupation of Kuwait, as the case may be;

3) The claimant indicates that he or she or a family member was a medical professional or worker, or a print, television or radio journalist, or an (amateur) radio or computer operator, in the period prior to or during the Iraqi invasion and occupation of Kuwait;

4) The claimant indicates that he or she or a family member, or other persons in the same or similar situations, were subjected to, or were threatened with interrogation, arrest, torture, detention, assault, or other forms of injury, by members of the Iraqi armed forces, or officials, employees or agents of the Government of Iraq or its controlled entities, during the period 2 August 1990 to 2 March 1991;

5) The claimant indicates that a family member, or other persons in the same or similar situations, were killed, or were under threat of execution, by members of the Iraqi armed forces, or officials, employees or agents of the Government of Iraq or its controlled entities, during the period 2 August 1990 to 2 March 1991;

6) The claimant indicates fear caused by specific actions (e.g., execution, injury, assault or detention; or interrogation either at home or at a checkpoint; or the looting and vandalizing of personal property, or damage to real property) on the part of members of the Iraqi armed forces, or officials, employees or agents of the Government of Iraq or its controlled entities, directed towards or taken against the claimant or his or her family, or other persons in the same or similar situations;

7) The claimant indicates fear of sexual assault by members of the Iraqi armed forces, or officials, employees or agents of the Government of Iraq or its controlled entities, based on a knowledge of attacks against other persons, in the same or similar situations, by members of the Iraqi armed forces, or officials, employees or agents of the Government of Iraq or its controlled entities, during the period 2 August 1990 to 2 March 1991; and

8) The claimant was forced to hide on account of fear caused by actions taken by the Iraqi armed forces, or officials, employees or agents of the Government of Iraq or its controlled entities during the period 2 August 1990 to 12 August 1990 and/or the period from 19 February 1991 to 1 March 1991 (the "critical periods"). According to several reports, conditions of intense hostility were present during the initial stages of Iraq's entry into, and consolidation of its position in, Kuwait. Thus, claimants indicating that they were in hiding during this early period (by most accounts, 2 August 1990 to 12 August 1990), may be presumed to have gone into hiding on account of a manifestly well-founded fear. Similarly, reports indicate that from about 19 February 1991 to 1 March 1991, Iraqi forces embarked on a campaign of arrests and detention as the threat of an attack by the Allied Armed Forces increased. Claimants indicating that they were in hiding during this period, may also be considered to have hidden on account of a manifestly well-founded fear.

In light of the foregoing, the Panel determines that claimants falling within any of the above categories, or demonstrating any of the characteristics identified above in their claim form or attached documentation, may be considered to have established that they were forced to hide on account of a manifestly well-founded fear for their lives or of being taken hostage.

(b) Number of Days

The Decision 8 compensation formula for forced hiding is based on the number of days the claimant was forced to hide. For the same reasons noted above, to the extent not contradicted by other available information, the Panel relied on the number of days asserted by the claimant on his or her claim form or in the attached documentation to calculate the compensation awardable for forced hiding; adjusted, if necessary, to reflect the number of days within the critical periods during which the claimant was forced to hide on account of a manifestly well-founded fear.

Several claimants failed to indicate the number of days they were forced to hide. Nevertheless, sufficient evidence frequently was available to enable the Panel to conclude that the claimant satisfied one or more of the forced hiding conditions. In these cases, the Panel determined the amount of compensation awardable on the basis of the number of days the claimant could reasonably be assumed to have hidden on account of a manifestly well-founded fear, taking into account such factors as the date the claimant may have departed Iraq or Kuwait. In this regard, the Panel also relied on the critical periods to calculate the number of days on which to base the compensation awardable.

However, where the Panel was unable to conclude that the claimant had satisfied any of the eight forced hiding conditions described above, and the claimant had not provided the number of days he or she may have been in hiding, the Panel determined that no compensation could be awarded.

(v) Claims for "Missing Persons"

A number of claims were presented on behalf of persons asserted to be either still missing or detained in Iraq. As discussed in Part II, section C.4.c., supra, the Panel recommends that, in accordance with the procedures established in Decision 12, these claims not be awarded compensation at this time.

Based on the considerations discussed and applying the principles described in the foregoing, the Panel has arrived at the recommendations for "C1-MPA" claims referred to in Part V and the Annexes, infra.

2. Loss Type "C2": Damages Arising from Personal Injury

Decision 1 provides that payments of up to US$ 100,000 "are available with respect to . . . personal injury . . . or medical expenses . . . as a result of Iraq's unlawful invasion and occupation of Kuwait."[169] Using the "C2" page of the category "C" claim form, individuals may file claims for medical expenses incurred in connection with the claimant's personal injury, and for MPA resulting from the serious personal injury of the claimant or from witnessing the intentional infliction of events leading to the serious personal injury of the claimant's spouse, child or parent.

a. Summary of Relevant Facts

1) Documentation

As further described in section d.3., infra, during Iraq's invasion and occupation of Kuwait, the preparation of doctors' reports, medical certificates and records was severely limited or non-existent.[170] This has led to a lack of contemporaneous documentation with regard to many cases of injury. Furthermore, those records that were made frequently were lost, destroyed or left behind. As a result, no definitive estimate is available of the number of civilians who were injured in the course and as a result, of the Iraqi invasion and occupation of Kuwait.

The difficulty attendant on producing reliable figures is further compounded by several factors. Not every injured person has been able to seek or to obtain treatment. Also, cultural and other factors are known to render victims reluctant to report events such as rape. In addition, many individuals may not have fully recognized the traumatic effects of the invasion and occupation on their mental health, making it likely that a considerable number of such cases have gone unreported.

If the composition of the First Instalment of claims filed under category "B" is an indication, it may be estimated that, in addition to those who died as a result of their injuries, a minimum of 2,000 civilians sustained injuries.[171] The majority of these are Kuwaiti nationals. For several reasons, however, the actual number is likely to be substantially higher. It is evident that not all injured persons have submitted a claim. In addition to the factors described in the foregoing, this is due to the fact that medical care may have been provided free of charge or that expenses may have been compensated from other sources. Moreover, those who have filed a claim will not always have done so under category "B".

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[169] Decision 1, at para. 14.

[170] Kälin Report, at paras. 189-200.

[171] Of the 1,119 claims constituting the First Instalment of claims filed under category "B", approximately 50 percent relate to injury; the total number of "B" claims filed is about 4,500.

Even if the exact number may not be certain, the injuries suffered as a result of Iraq's invasion and occupation of Kuwait have been extensively documented in United Nations-sponsored reports and in submissions made by and reports prepared on behalf of various Governments, most notably that of Kuwait.[172] Moreover, several patterns emerge from the explanations given in the claims themselves. The description of injury causes contained in these sources provides a clear and comprehensive picture of the suffering caused.

2) Principal Causes of Injury

The causes of injury thus identified include the following:

a) Military Operations or Actions

Military operations or actions of military personnel in Kuwait or Iraq, including gunshots and bullet wounds, artillery fire, bombardment and air raids, as well as explosion of mines or other ordnance, caused numerous injuries both during and after the invasion and occupation.

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[172] Kälin Report; *Interim Report to the Secretary-General by the United Nations Mission led by Mr. Abdulrahim A. Farah, Former Under-Secretary-General, Assessing the Losses of Life Incurred During the Iraqi Occupation of Kuwait, as well as Iraqi Practices Against the Civilian Population in Kuwait* (S/22536) (29 April 1991) (the "Farah Interim Report"); *Report to the Secretary-General by a United Nations Mission, led by Mr. Abdulrahim A. Farah, Former Under-Secretary-General, Assessing the Scope and Nature of Damage Inflicted on Kuwait's Infrastructure During the Iraqi Occupation of the Country from 2 August 1990 to 27 February 1991* (S/22535) (29 April 1991) (the "Farah Report"); *Report to the Secretary-General on Humanitarian Needs in Kuwait in the Immediate Post-Crisis Environment by a Mission to the Area led by Mr. Martti Ahtisaari, Under-Secretary-General for Administration and Management* (S/22409) (28 March 1991) (the "Ahtisaari Report"); *Explanatory Statement to Accompany Initial Claims Submitted on Behalf of Individuals by the Government of Kuwait, Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression, 26 June 1992* (the "Explanatory Statement"); *Supplemental Covering Report for Claims in Category C, Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression, 14 April 1994* (the "Supplemental Report"); *The Traumatic Events and Mental Health Consequences Resulting from the Iraqi Invasion and Occupation of Kuwait, Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression, Al-Riggae Specialized Center for Treatment of War Victims in Kuwait, 1 December 1993* (the "Al-Riggae Report"); *Report on Iraqi War Crimes, War Crimes Documentation Center, United States Department of the Army* (8 January 1992) ("War Crimes Report").

b) Torture, Assault, Maltreatment, Oppression

The Explanatory Statement notes that "[f]rom the first days of the occupation, Iraqi forces sought to eradicate all resistance in the civilian population by beginning a program of detention, torture, and summary execution that became a constant, oppressive feature of daily life throughout the occupation. Arbitrary arrests of civilians became common."[173]

Thousands of civilians were arrested during the occupation, a substantial number of whom were taken to Iraq.[174] Many detainees suffered injuries as a result of torture. Noting that 35 of the 47 detention sites throughout Kuwait were used for torture, the Kälin Report concludes that "torture and cruel, inhuman and degrading treatment were systematically used during interrogations of those arrested during the ongoing occupation."[175] Injuries also occurred in detention due to maltreatment by prison guards or lack of proper medical care, as well as during Iraqi efforts to quell peaceful demonstrations against the occupation.

The majority of persons who were injured as a result of torture were persons involved in the Kuwaiti resistance, or their family members.

A significant portion of the claims submitted to the Commission are based on injuries that were suffered as a result of physical assaults by Iraqi forces as individuals passed checkpoints at the border and elsewhere. In many cases, persons resisting efforts to strip them of their personal belongings (including cash, jewellery, and electronic equipment, as well as motor vehicles) were subjected to a brutal beating.

c) Sexual Assault

Many persons, most of whom were women, were raped by Iraqis. Such incidents fell into several categories: rapes of foreign women in the first two weeks of the occupation; rapes of women during house searches, sometimes in front of relatives; rapes of women abducted for that purpose from the street; rapes suffered as individuals sought to leave Iraq or Kuwait and passed through checkpoints; and rapes inflicted as a means of torture, including torture of those who were required to watch.[176]

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[173] Explanatory Statement, at p. 3.

[174] Id., at p. 5. On and around 19 February 1991, for example, at least 2,000 Kuwaiti men are estimated to have been arrested and deported.

[175] Kälin Report, at para. 116. A detailed description of torture practices is contained in the affidavit of Dr. Abdulla Al-Hammadi, a medical doctor who remained in Kuwait during the occupation and who has documented some 300 cases of torture. The affidavit also provides a more general overview of the medical consequences of atrocities and other acts committed by Iraq during the occupation. Explanatory Statement, Annex B.

d) Lack of Medical Care

As a consequence of the Iraqi occupation of Kuwait, the level of health care in Kuwait was severely reduced. According to the Kälin and Farah Reports, this reduction was caused principally by the following three factors:

(i) Reduction in Number of Health Care Providers

The immediate effect of the invasion was the departure from the country of thousands of expatriate health workers, either voluntarily, or upon instructions from their governments, or due to a fear for their lives.[177]

Many doctors, nurses, ambulance workers and paramedics stayed away from hospitals and were forced to hide their professional identity. Those who continued to provide medical services were prevented, in many instances, from providing appropriate medical care due to the continuous presence of armed Iraqi soldiers in hospital wards, administrative offices and operating theatres.[178]

(ii) Closing, Dismantling and Pillaging of Health Care Facilities

By the end of the occupation, all 87 health centres in Kuwait were closed, or were operating well below their normal capacity. The provision of health care services was also curtailed due to the destruction and pilferage of hospital equipment, vaccination materials, surgical tools, hospital beds, and medical supplies.

(iii) Denial of Access to Health Care

According to the Kälin Report, a number of circumstances made access to health care difficult.[179]

In September-October 1990, the population of Kuwait was ordered to exchange Kuwaiti identity documents for Iraqi documents. Access to medical facilities was denied to persons who refused to comply with these orders.

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[176] Explanatory Statement, at pp. 9, 10; Kälin Report, at paras. 182 (a) through (d).

[177] Farah Report, at para. 117.

[178] Kälin Report, at paras. 190-191.

[179] Id., at para. 51.

Pursuant to orders issued by the Iraqi Revolutionary Command Council, Iraqi military personnel had first right of access to medical services, followed by non-combat personnel.

Curfew hours also limited access to medical facilities. According to the Kuwaiti authorities, many persons requiring medical care were reluctant to travel to seek help because of a standing shoot-on-sight order issued by the Revolutionary Command Council for anyone breaking the curfew. Moreover, because the Iraqis had issued a number of arrest warrants, and had set up checkpoints throughout the country, there was a general fear of transiting the city. Armed Iraqi soldiers inside hospital premises conducting identification checks, as well as the positioning of armoured personnel carriers and tanks in front of medical facilities, served to discourage individuals from visiting hospitals for fear of being arrested.

Persons requiring emergency medical care could not get to hospitals because of limited ambulance services. In addition, because of fuel rationing and the vandalizing and theft of automobiles, other means of transportation to medical facilities were also limited.

e) Accidents

Injuries also resulted from accidents that took place during the period of the occupation, such as collisions with military vehicles, and accidents that occurred outside of Iraq or Kuwait while individuals were fleeing those countries.

A number of people also sustained injury while trying to cross the desert as they fled Kuwait, or while they were in desert camps. These persons suffered from exposure, heat stroke, exhaustion and stress, dehydration and other similar conditions. Others were injured at the hands of Iraqi soldiers as they sought to avoid capture by Iraqi desert patrols, or because of mine and ordnance explosions. Generally, the persons falling into this category were non-Kuwaitis.

f) Environmental Health Threats

Iraq's premeditated destruction of the Kuwaiti oil industry caused 734 oil well fires and the creation of huge oil lakes, affecting the health of many citizens.[180] Respiratory problems in particular were a frequent occurrence.

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[180] Explanatory Statement, at p. 17.

g) Invasion and Occupation in General

The Al-Riggae Report documents the serious effect that the invasion and occupation had on the mental health of the population. A significant percentage of those who experienced the invasion and/or occupation, both Kuwaitis and non-Kuwaitis, were afflicted by the mental injury known as post-traumatic stress disorder ("PTSD"). Not surprisingly, the prevalence of this disorder was even higher among persons who suffered specific traumas, such as those mentioned in sections a.2) a) through f), supra.[181]

b. Claims in First Instalment

The table below gives the total number of "C2" claims in the First Instalment by submitting country. The First Instalment represents a small portion of the total number of "C2" claims, which currently is expected to range from 2,500 to 7,500.

NUMBER OF "C2" CLAIMS IN FIRST INSTALMENT BY COUNTRY	
Australia	2
France	1
Great Britain	19
Kuwait	1
Nepal	1
Pakistan	36
United States	12
Yugoslavia	2
TOTAL	74

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[181] Al-Riggae Report, Executive Summary.

c. Framework for Recommendations

1) Governing Council Decisions

The following Governing Council Decisions are specifically applicable, in whole or in part, to "C2" personal injury damages.

a) Decision 1

As noted previously, Decision 1 states that payments of up to US$ 100,000 "are available with respect to . . . personal injury . . . or medical expenses . . . as a result of Iraq's unlawful invasion and occupation of Kuwait."[182] It also provides that "[c]laims must be for . . . personal injury or other direct loss to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait."[183]

b) Decision 3

Decision 3, entitled "Personal Injury and Mental Pain and Anguish," specifies that "serious personal injury" includes the following: dismemberment; permanent or temporary significant disfigurement, such as substantial change in one's outward appearance; permanent or temporary significant loss of use, or limitation of use, of a body organ, member, function or system; any injury which, if left untreated, is unlikely to result in the full recovery of the injured body area, or is likely to prolong such full recovery; as well as "instances of physical or mental injury arising from sexual assault, torture, aggravated physical assault, hostage-taking or illegal detention for more than three days, or being forced to hide for more than three days, on account of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained."[184]

Decision 3 further specifies that "serious personal injury" does not include bruises, simple strains and sprains, minor burns, cuts and wounds; or other irritations not requiring a course of medical treatment.[185]

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[182] Decision 1, at para. 14.

[183] Id., at para. 18. Note that this Decision also establishes standards for claims for "serious personal injury" in category "B".

[184] Decision 3, at p. 2.

[185] Id.

It may be observed, however, that the types of injuries for which a claim may be made on the "C2" page are not limited to the instances of serious personal injury thus defined by Decision 3. The fact that an injury need not be "serious" for it to be compensable as a "C2" loss is one of the elements distinguishing the "C" from the "B" category of claims. On the subject of MPA, Decision 3 states that, in addition to compensation for "pecuniary losses (including losses of income and medical expenses) resulting from mental pain and anguish," compensation will be provided for "non-pecuniary injuries resulting from such mental pain and anguish." Pursuant to Decision 3, of the types of personal injury listed on the "C2" loss page, this applies to those that are "serious," i.e., dismemberment; disfigurement; loss or limitation of use of organ, member, function or system; sexual assault, aggravated assault or torture; and also to witnessing the intentional infliction of these types of injury[186] on the claimant's spouse, child or parent.[187]

c) Decision 8

This Decision records the ceiling amounts that apply to the compensation of MPA. For the types of personal injury itemized on the "C2" loss page that are eligible for such compensation, covering cases of "serious personal injury," the Governing Council has set limits as follows: US$ 15,000 for dismemberment, permanent significant disfigurement, or permanent loss of use or permanent limitation of use of a body organ, member, function or system; US$ 5,000 for temporary significant disfigurement or temporary significant loss of use or limitation of use of a body organ, member, function or system, as well as for each incident of sexual assault, aggravated assault, or torture; US$ 2,500 for witnessing the intentional infliction of the aforementioned types of injury on the claimant's spouse, child, or parent, with a ceiling of US$ 5,000 per family unit.[188]

Decision 8 further provides that compensation for MPA is payable cumulatively if a claimant has suffered multiple cases of injury, subject to an MPA ceiling of US$ 30,000 per claimant and US$ 60,000 per family unit.[189]

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[186] The Panel observes that, while the claim form refers to the witnessing of the intentional infliction of events leading to the family member's "personal injury," Decision 3 thus appears to limit the compensation of MPA for "C2" witnessing to cases of "serious personal injury."

[187] Id., at pp. 2, 3. While, as noted, this Decision includes "instances of physical or mental injury" (such as PTSD) arising from hostage-taking or other illegal detention and from forced hiding in the definition of "serious personal injury" in the sense of the "C2" loss page, claims for MPA based on such events are to be presented as a separate loss element on the "C1" loss page.

[188] Decision 8, at p. 2.

[189] Id., at p. 3.

2) Government Submissions in Response to Article 16 Reports

A number of governments have submitted comments in response to issues specifically relating to damages arising from personal injury raised in reports issued pursuant to Article 16 of the Rules. Some of these issues have been stated in relation to the "B" category of claims, but they are also relevant to the resolution of "C2" claims.

Various governments, including that of Iraq, have commented on the question of the compensability of injuries that were complicated by the lack of medical care in Kuwait after 2 August 1990, discussed in the First Report Issued Pursuant to Article 16 of the Rules.[190] Several governments, again including that of Iraq, have contributed views on the causation issue, mentioned in the same Report, that is presented by accidents suffered by claimants while departing from Iraq or Kuwait.[191]

The relevant issues contained in the Third Report Issued Pursuant to Article 16 of the Rules have also elicited reactions.[192] Several governments, including the Government of Iraq, have commented on questions raised by cases of detention or mistreatment asserted to have occurred in Kuwait after the end of the occupation. A number of governments, including that of Iraq, have discussed premature delivery and abortion as a cause of serious personal injury. Views have also been submitted on claims based on respiratory problems resulting from the burning oil fields in Kuwait, and on the issue whether conditions such as stress and depression qualify as serious personal injury. In addition, the causation question raised by injuries resulting from "forced labor" has attracted comments.

Finally, a number of governments, again including that of Iraq, have responded to several questions that were raised in the Fourth Report Issued Pursuant to Article 16 of the Rules in connection with claims for MPA relating to a family member.[193]

In arriving at its views, the Panel has carefully considered all of the comments thus contributed.

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[190] Article 16 Report No. 1, at para. 7.

[191] Id., at para. 8.

[192] Article 16 Report No. 3, at paras. 10-14.

[193] Article 16 Report No. 4, at para. 24.

3) Claim Form

The "C2" page of the claim form requests the claimant to "summarize briefly" "what has happened" to him or her. In the same connection, the claimant is asked to specify the "date of injury" and to attach a separate statement explaining the "cause and circumstance of injury."

Requesting the claimant to submit "appropriate documentation, such as photocopies of medical or insurance records," the form provides some space to note the "nature and extent" of the injury. Inviting the claimant to indicate the applicable item(s), the "C2" page further offers a choice among the following categories of injury: "dismemberment;" "disfigurement (permanent or temporary);" "loss or limited use of body organs, etc.;"[194] "other injury requiring medical attention;" "sexual assault;" "torture;" and "aggravated physical assault." For all of these categories, with the exception of "other injury requiring medical attention," the form provides space for the claimant to indicate that he or she is (also) claiming on the basis of MPA.

With regard to the amount of the claim, the form requests the claimant to record the currency and amount of "medical expenses" as well as the total "value of loss."

While the section described in the foregoing relates to injury suffered by the claimant, the form also leaves room for the claimant to indicate that he or she is "claiming for mental pain and anguish for witnessing the intentional infliction of events leading to the personal injury" of the claimant's spouse, child or parent. In connection thereto, the claimant is to state the name of the injured relative, the injured person's "I.D. number," and the nature and date of the injury.

d. Processing Considerations and Methodology

1) Introduction

Within the parameters set by the applicable Rules and Governing Council Decisions, taking into account the views expressed by governments, and on the basis of the information that has been provided in response to the claim form and that which has become available from other sources, the Panel has reviewed the "C2" claims in the First Instalment.

A description of the most important issues raised and the specific considerations that, in addition to the factors set out above, have contributed to the Panel's recommendations for these losses is provided below. The extent to which these principles and procedures will need to be further developed will depend on the characteristics of future instalments of "C2" claims.

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[194] The relevant provisions of Decision 8 suggest that here, too, it would have been appropriate to invite a choice between a "permanent" and a "temporary" character of the injury.

The Panel has endeavoured to develop criteria that lend themselves to the processing of "C2" claims on a standardized basis. In setting these criteria, the Panel has consistently borne in mind the applicable general evidentiary standard laid down in Decision 1. As noted in Part II, section E, supra, this Decision records the Governing Council's determination that claims "must be documented by appropriate evidence of the circumstances and the amount of the claimed loss," which will be "the reasonable minimum that is appropriate under the circumstances involved."[195]

At the Panel's request, to assist on the subject of MPA, the Commission has retained the services of an expert in the field, Dr. Norman Sartorius. As mentioned previously, Dr. Sartorius convened a group of experts representing relevant disciplines such as psychiatry, psychology, general and war and disaster medicine[196]. The Panel's recommendations in cases involving MPA take guidance from the report issued by these experts, which is attached as Annex VI.[197] The Panel acknowledges the importance of this contribution, which sets standards that may form precedents for future compensation programs as well. Dr. Sartorius has continued to be of assistance in the application of the guidelines stated therein.

2) Classification of Injury

The Panel's review of the First Instalment has revealed that a number of claimants have had difficulty selecting the injury category (categories) on the "C2" page that corresponds (correspond) to the injury (injuries) on which their claim is based. This confusion may be explained by several factors. The Panel observes that the types of injury stated on the "C2" page are not mutually exclusive. The fact that the claim form provides no explanation of these types further complicates the situation for the claimants, many of whom may not have been well-equipped to address this issue.

For several reasons, however, it is important that the injuries are classified correctly. Only injuries that correspond to one of the types of serious injury defined in Decision 3 entitle a claimant to compensation for MPA. Furthermore, pursuant to Decision 8, the ceiling amounts payable for MPA depend on the nature of the injury suffered. Verification of the claimant's input also is necessary to permit the application of the guidelines stated in the MPA Report. It should further be recalled that MPA is payable cumulatively, in the words of Decision 8, "where more than one situation applies." As an additional factor, where that is considered appropriate, the proper classification of the injury allows the application of evidentiary criteria that vary according to the type of injury suffered.

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[195] Decision 1, at para. 15 (a).

[196] See supra n. 101.

[197] *Report of the Panel of Experts Appointed to Assist the United Nations Compensation Commission in Matters concerning Compensation for Mental Pain and Anguish* (14 March 1994) (the "MPA Report").

Accordingly, based on the information the claimant has provided on the claim form and, where applicable, in further documentation, each case of injury has first been categorized in accordance with the groupings appearing on the "C2" loss page. This categorization draws upon the descriptions provided in Decision 3, and, on a more detailed level, upon guidelines that have been prepared and continue to be developed in consultation with a medical expert retained by the Commission for this purpose.[198] Where appropriate, therefore, an injury may have been shifted from the category selected by the claimant, if any, to that indicated by the guidelines[199].

Consistent with the purposes of classification, the Panel further finds that if a claim for "other injury requiring medical attention" is re-categorized as one of the injury types mentioned on the "C2" loss page that allow a claimant also to seek compensation for MPA, the claimant's claim normally may reasonably be assumed to extend to MPA. This finding corresponds to recommendations stated in the MPA Report.[200]

3) Fact of Injury

The second issue addressed by the Panel is whether the claimant has established the fact of the injury; either that of him- or herself, or, for claims based on the witnessing of injury, that of the family member.

In this connection, the Panel notes that a number of "C2" claims in the First Instalment are not accompanied by documentary evidence. A similar scarcity of evidentiary support for the First Instalment of death and injury claims in category "B" has been attributed mainly to the circumstances prevailing in Kuwait and Iraq during the period of the invasion and occupation.[201] Those who were forced to flee or to hide, or were held captive, were unable to procure or retain documents that later could be used to substantiate their losses. In the case of non-Kuwaiti claimants, such as those who make up nearly the entire First Instalment of "C2" claims, this problem has been compounded by the fact that many have not returned to Kuwait or Iraq.

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[198] Dr. Marcel Dubouloz, former Deputy Medical Director of the Medical Division of the International Committee of the Red Cross, Secretary General of the International Society of Disaster Medicine. Dr. Dubouloz has also assisted the category "B" Panel of Commissioners.

[199] For a general discussion of the presentation of the claims, see Part III, section D.3, supra.

[200] MPA Report, at p 20.

[201] "B" Recommendations, at p. 33.

Such general evidentiary impediments were faced by most claimants before the Commission.[202] A problem that is specific to injury losses lies in the fact that, as a result of Iraq's invasion and the ensuing breakdown of civil order within Kuwait, most medical services were being offered on a restricted basis. In view of the large numbers of doctors, nurses and hospital administrative staff who had left Kuwait in the aftermath of the invasion, or were in hiding, hospital services were operating substantially below their normal capacity. Consequently, as noted in section a.1., supra, the contemporaneous preparation of doctors' reports and certificates and the administration of medical records were severely limited or non-existent.[203]

A number of other factors are known to have affected the evidentiary position of "C2" claimants. In many instances, doctors were required to make house calls because of the lack of ambulance services to transport patients to hospitals. Under the circumstances, few of them were concerned with establishing medical records. Also, in certain instances, the Iraqi authorities had issued warrants for the arrest of persons requiring medical attention. In the majority of such cases, no official records were made or kept. The documentation of injuries suffered in the course of detention, including the numerous cases of torture, was hindered by the very fact that they took place while the claimant was detained. The same consideration applies, to a certain extent, to injuries sustained by claimants who were in hiding. Also, it appears that a number of claims were filed before the claimant had an opportunity to obtain official documentation regarding his or her relative's injury. In addition, there are the considerations mentioned in section a.1., supra: not every injured person has been able to seek or to obtain treatment, and socio-cultural and other reasons may have caused victims not to disclose certain types of injury.[204]

The factors described in the foregoing assist in explaining the absence of documentary evidence in support of the fact of injury in a number of "C2" cases. Also, in a general way, the resulting lack of specific information characterizing such claims is placed in context by the findings in the Kälin Report and the other documents cited in note 172, supra. The Panel is aware that these lend additional credibility to the assertions made by the claimants.

Under these circumstances, the Panel finds that a statement by the claimant, either provided on the claim form or as a separate document, constitutes sufficient evidence of the fact of injury. A special standard, furthermore, should apply to those "C2" claimants who have established that they have been taken hostage or otherwise detained or have been in hiding. Covered by the "C1" loss page, such events are likely to have had a deleterious effect on the health of these individuals, at the same time hampering their ability to provide evidence of their injuries. Consequently, their completion of the "C2" loss page may be viewed as sufficient proof of the fact of their injury.

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[202] See Part II, section E.2.b., supra.

[203] Kälin Report, at paras. 189-200; see also "B" Recommendations, at pp. 33-34.

[204] An example of this phenomenon is contained in the MPA Report, at p. 19. See also "B" Recommendations, at pp. 35-38.

4) **Cause of Injury**

As noted previously, resolution 687 of the Security Council reaffirms Iraq's liability for any direct loss, damage or injury resulting from its unlawful invasion and occupation of Kuwait.[205] Inasmuch as Decision 1 establishes personal injury as a direct loss,[206] it remains for the Panel to verify, for each individual case, the presence of a causal relationship with the invasion.

Of obvious significance for this purpose is the period between 2 August 1990, marking the beginning of the invasion, and 2 March 1991, being the date of adoption of Security Council resolution 686 and considered the official date of the cease-fire between the Allied Coalition Forces and Iraq. Consistent with the causation categories enumerated in Decision 1,[207] and taking into account the data contained in the Kälin Report and other relevant documentation,[208] the Panel considers it realistic to presume that many of the injuries that have occurred during this period are likely to be attributable to Iraq's activities associated with the invasion and occupation. Indeed, for certain types of injury, this presumption is not limited to the occupation period: even if they were incurred after the cessation of hostilities, injuries such as wounds caused by mine explosions, miscarriages, respiratory difficulties and mental problems may be attributable to Iraq.

The methodology employed by the Panel to verify the existence of the required causal relationship reflects these considerations. Where the causal link with Iraq's actions is implied by the nature of the injury, such as gunshot or explosion wounds, the Panel finds no additional need for explicit evidence to that effect. In all other cases, a statement by the claimant mentioning or implying such causal link, whether provided on the claim form or separately, creates a presumption that the injury may be attributed to Iraq. As this presumption is rebuttable by information in the file, the claims have been reviewed additionally for indications that Iraq cannot be held responsible.

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[205] Resolution 687, at para. 16.

[206] Decision 1, at para. 18.

[207] Id.

[208] See supra n. 172.

One of the issues which the Panel considered in the course of this review is whether injuries suffered in road accidents are attributable to Iraq. Bearing in mind the considerations which the "B" Panel of Commissioners has expressed on this subject,[209] the Panel in the case of the First Instalment has developed guidelines that enable the particular circumstances of each case to be taken into account; in addition to the parties involved, these include the date, location and immediate cause of the accident.

5) Compensation

As noted previously, individuals may claim for medical expenses incurred in connection with their personal injury, and for MPA resulting from their serious personal injury or from witnessing the intentional infliction of events leading to the serious personal injury of their spouse, child or parent.

a) Medical Expenses

The determination of the recommended amount of compensation under this heading requires the Panel to weigh various factors. Reference has been made already to the various impediments that affect the ability of "C2" claimants to prove their injury case.[210] It appears that a substantial number of persons in Kuwait were able to obtain medical treatment free of charge; this constitutes one of several factual aspects to be considered.[211] The Panel also observes that the nature of the injury may provide a certain guidance as to the range of amounts that may be considered reasonable in relation to medical expenses.

The compensation criteria developed by the Panel take account of the evidence submitted in support of the fact of injury; proof of the occurrence of the injury also serves to enhance the credibility of the amount of the loss. This is particularly valid where the amount sought is reasonable in relation to the injury suffered. In instances where that does not appear to be the case, but where the fact of the injury has been established through evidence of a documentary nature, any form of valuation evidence beyond the completion of the "C2" loss page may be deemed to provide a credible indication of the medical expenses incurred.

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[209] "B" Recommendations, at pp. 24, 25.

[210] See section d.3, supra.

[211] In this connection, it may be noted that before the invasion, residents of Kuwait enjoyed access to Government subsidized medical care. *Kuwait Country Profile 1992-93*, The Economist Intelligence Unit (November 1992).

b) MPA

Decision 3, it has been explained, categorizes the events entitling claimants to compensation for MPA in connection with an injury: dismemberment; disfigurement; loss or limitation of use of a body organ, member, function or system; sexual assault, aggravated assault or torture; and witnessing the intentional infliction of these types of injury on the claimant's spouse, child or parent. The MPA Report observes the gravity and distressing nature of these situations and notes that there is well-established evidence that all such events cause severe MPA.[212] Accordingly, the Panel observes that once the fact of injury has been proven, the presence of MPA may reasonably be assumed.

Decision 8 affirms the Governing Council's decision to adopt ceilings rather than fixed amounts for compensation for MPA.[213] In order to assist in the determination of the recommended amount of compensation, the MPA Report provides a number of relevant considerations, culminating in a list of differentiating criteria. These so-called "modifying factors" allow the compensation to be adjusted in accordance with certain readily observable and objective standards that are intended to reflect different degrees of MPA suffered by claimants.

(i) MPA from Claimant's Injury

The Panel has reached its recommendations for this category of MPA on the basis of the relevant modifying factors, to which it refers.[214] Whether such factors apply has been determined by a review of all parts of the claim file, ranging from each of the loss pages to statements and other evidence attached to the form. The following three additional comments may be made:

Although fully aware that such witnessing constitutes torture, the Panel has not been able to follow the MPA Report's recommendation that persons who were forced to witness the intentional infliction of death or certain injuries on a family member also qualify for compensation of MPA resulting from an incident of torture.[215] The Panel's reluctance in this regard is motivated by the fact that the implementation of this particular recommendation might be incompatible with the fact that Decision 8 establishes a ceiling amount for such witnessing events.

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[212] MPA Report, at p. 14.

[213] See section c.1.(c), supra.

[214] MPA Report, at pp. 21-22.

[215] MPA Report, at p. 23.

Following up on the MPA Report's recommendations with regard to incidents of aggravated assault, in the absence of applicable modifying factors entitling a victim to the ceiling amount, the Panel recommends compensation of 50 percent thereof for such cases.

Finally, with regard to the modifying factors stated in the MPA Report in relation to the MPA events listed as category (b) in Decisions 3 and 8, the Panel notes that it has applied these, where relevant, both to permanent and to temporary injuries. In the absence of a specific suggestion in the MPA Report, the Panel, taking guidance from the ceiling amounts established by Decision 8, considers US$ 2,500 appropriate as the minimum lump-sum amount for MPA resulting from an injury of a temporary nature.

(ii) MPA from Witnessing Family Member's Injury

Determination of the recommended amount of compensation for this category of events requires the resolution of a number of preliminary issues.

Pursuant to Decision 3, and as noted on the claim form, these claims are to be based on the injury sustained by the claimant's spouse, child or parent. The Panel's discussion of the definition of "family unit" set forth in Part III, section C.4.d, supra, gives further meaning to these terms.

On a related issue, it may be noted that, unlike the comparable "C3" loss page, the "C2" page does not require claimants to furnish proof of the required family relationship.[216] Instead, it invites claimants to state the name and the "I.D. Number" of the injured family member. The Panel observes that, nevertheless, the "C2" witnessing claims in the First Instalment are accompanied by documentary evidence of family relationship. Despite the fact that, as a result of the invasion and occupation, many documents have been destroyed or left behind in Kuwait or Iraq, claimants have managed to submit copies of marriage certificates and similar items of proof. All claimants have produced copies of their own identity documents as well as those of their injured spouse, child or parent. In the Panel's opinion, read in conjunction with the personal statements the claimants have also provided, these documents constitute reasonable evidence of the family relationship.

The "C2" loss page does not instruct claimants to document the circumstances of their witnessing. Expanding on observations made in the MPA Report, Dr. Sartorius has explained that, due to their damaging nature, situations such as those to which this type of claim pertains in many cases are unlikely to have been described beyond the claim form. The Panel's assessment as to whether the claimant has established the fact of witnessing takes account of these considerations.

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[216] The form links the instruction that claims for MPA "must be substantiated by appropriate evidence" to claims based on the injury of the claimant, not that of the claimant's relative. Moreover, it is likely that claimants have interpreted this statement as merely relating to the presence of MPA.

A further issue the Panel has had to address in connection with these claims is whether the injury was inflicted intentionally. The difficult nature of this question has necessitated a careful study of the particulars of each case. Foremost among these is the nature of the injury suffered: injuries such as those resulting from sexual assault, torture, and aggravated physical assault may be presumed to have been caused intentionally.

Subject to the exception stated previously with regard to the suggestion to classify events of witnessing also as torture, the Panel's compensation recommendations for this category of MPA events are guided by the relevant observations made in the MPA Report. The Panel makes reference to these observations.

Based on the considerations and applying the principles described in this section, the Panel reaches the recommendations for "C2" personal injury losses referred to in Part V and the Annexes, infra. These recommendations take into account compensation that may have been awarded to claimants who have also filed a claim in category "B".

3. Loss Type "C3": Damages Arising from the Death of Your Spouse, Child or Parent

Decision 1 provides that payments of up to US$ 100,000 "are available with respect to death . . . as a result of Iraq's unlawful invasion and occupation of Kuwait."[217] Using the "C3" page of the category "C" claim form, individuals may file claims for medical, burial and other expenses and for the loss of support resulting from the death of their spouse, child or parent. They may also claim compensation for MPA caused by their witnessing of the intentional infliction of events leading to that death, or resulting from the fact of death as such.

a. Summary of Relevant Facts

1) Documentation

Several factors make it difficult to produce a definitive estimate of the number of civilians who died in the course and as a result of the Iraqi invasion and occupation of Kuwait. For example, the preparation of hospital and doctors' reports, medical certificates and records during Iraq's invasion and occupation of Kuwait was severely limited or non-existent, due to the existing emergency conditions.[218] Those records which had been established were partially lost or destroyed. Summarized in section a.2), infra, the circumstances under which persons died have also complicated documentation efforts. In this connection, furthermore, it remains unclear how many of the persons who were missing after the end of the occupation lost their lives while being held in detention by the Iraqis.[219] Also, causes such as mine explosions continue to claim lives.

The composition of the First Instalment of claims filed under category "B" appears to indicate that more than 2,000 civilians, the majority being Kuwaiti nationals, have died.[220] The actual number may be higher, however. For various reasons, it is uncertain whether claims have been filed for all instances of death. For example, surviving relatives may have received compensation from other sources, or family members may be unsure whether their relative is missing, detained or dead. Moreover, those who have filed a claim will not always have done so under category "B".

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[217] Decision 1, at para. 14.

[218] Kälin Report, at paras. 189-200.

[219] Kälin Report, at paras. 141, 143.

[220] Of the 1,119 claims constituting the First Instalment of claims filed under category "B", approximately 50 percent relate to deaths; the total number of "B" claims filed is about 4,500. Based on information collected from hospitals, emergency departments, and graveyards, a medical doctor who remained in Kuwait during the occupation has put the total number of reported deaths during that period at 2,240. This result, he adds, does not include an unknown number of unreported deaths of persons killed and buried secretly by the Iraqis. Affidavit by Dr. Abdulla Al-Hammadi, Explanatory Statement, Annex B (the "Al-Hammadi Affidavit"), at para. 15.

Even if the exact number has not been determined, the deaths caused by Iraq's invasion and occupation of Kuwait have been extensively documented in the Kälin Report and other United Nations-sponsored assessments as well as in submissions made by, and reports prepared, on behalf of various Governments, most notably that of Kuwait.[221] Moreover, patterns emerge from the explanations given in the claims themselves. The description of causes of death contained in these sources provides a clear and comprehensive picture of the suffering caused.

2) Principal Causes of Death

The causes of death thus identified include the following:

a) Military Operations or Actions

Military operations or actions of military personnel in Kuwait or Iraq, including gunshots and artillery fire, bombardment, and air raids, as well as explosion of mines or other ordnance, caused numerous deaths both during and after the invasion and occupation.

b) Execution, Torture, Assault, Maltreatment, Oppression

The Explanatory Statement notes that "[f]rom the first days of the occupation, Iraqi forces sought to eradicate all resistance in the civilian population by beginning a program of detention, torture, and summary execution that became a constant, oppressive feature of daily life throughout the occupation. Arbitrary arrests of civilians became common."[222]

A substantial number of lives were claimed by arbitrary and summary executions in the context of arrests and searches, as well as during and following detention both in Kuwait and Iraq. According to the Kälin Report, many of those executed reportedly had been arrested by the Iraqi military; some time later their bodies were either delivered by the Iraqi forces to one of the Kuwaiti hospitals, or were found lying in the streets and other public places.[223] In a number of cases, detainees were brought home and shot in front of their families. A first wave of such executions started in September 1990 and lasted for several weeks.[224]

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[221] Kälin Report; Farah Interim Report; Farah Report; Ahtisaari Report; Explanatory Statement; Supplemental Report; Al-Riggae Report; War Crimes Report.

[222] Explanatory Statement, at p. 3.

[223] Kälin Report, at para. 129.

Of the thousands of civilians arrested during the occupation, a substantial number were taken to Iraq.[225] Many detainees were tortured, resulting in death in a number of cases. Noting that 35 of the 47 detention sites throughout Kuwait were used for this purpose, the Kälin Report concludes that "torture and cruel, inhuman and degrading treatment were systematically used during interrogations of those arrested during the ongoing occupation."[226] Deaths also occurred in detention due to maltreatment by prison guards or lack of proper medical care, as well as during Iraqi efforts to quell peaceful demonstrations against the occupation.[227]

The majority of persons who were executed or who died as a result of torture were persons involved in the Kuwaiti resistance, or their family members.

c) Lack of Medical Care

The Iraqi occupation of Kuwait severely impaired the level of health care in Kuwait, leading to the death of many individuals. As observed in Part IV, section 2.a.2)d), supra, according to the Kälin and Farah Reports, this reduction in health care resulted from the following three principal factors:

(i) Reduction in Number of Health Care Providers

The immediate effect of the invasion was the departure from the country of thousands of expatriate health workers, either voluntarily, or upon instructions from their governments, or due to a fear for their lives.[228]

Many doctors, nurses, ambulance workers and paramedics stayed away from hospitals and were forced to hide their professional identity. Those who continued to provide medical services were prevented, in many instances, from providing appropriate medical care due to the continuous presence of armed Iraqi soldiers in hospital wards, administrative offices and operating theatres.[229]

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[224] Id., at para. 130. The Al-Hammadi Affidavit, at para. 6, discusses various execution methods found to have been used by the Iraqi forces.

[225] Explanatory Statement, at p. 5. On and around 19 February 1991, for example, at least 2,000 Kuwaiti men are estimated to have been arrested and deported.

[226] Kälin Report, at para. 116. Based on the documentation of the cases of over 300 victims of torture, the Al-Hammadi Affidavit contains a detailed description of torture practices found to have been employed during the occupation. Al-Hammadi Affidavit, at para. 5.

[227] Id., at para. 137.

[228] Farah Report, at para. 117.

(ii) Closing, Dismantling and Pillaging of Health Care Facilities

By the end of the occupation, all 87 health centres in Kuwait were closed, or were operating well below their normal capacity. The provision of health care services was also curtailed due to the destruction and pillaging of hospital equipment, vaccination materials, surgical tools, hospital beds, and medical supplies.

(iii) Denial of Access to Health Care

According to the Kälin Report, a number of circumstances hindered access to health care.[230]

In September-October 1990, the population of Kuwait was ordered to exchange Kuwaiti identity documents for Iraqi documents. Access to medical facilities was denied to persons who refused to comply with these orders.

Pursuant to orders issued by the Iraqi Revolutionary Command Council, Iraqi military personnel had first right of access to medical services, followed by Iraqi non-combat personnel.

Curfew hours also limited access to medical facilities. According to the Kuwaiti authorities, many persons requiring medical care were reluctant to travel to seek help because of a standing shoot-on-sight order issued by the Revolutionary Command Council for anyone breaking the curfew. Moreover, because the Iraqis had issued a number of arrest warrants, and had set up checkpoints throughout the country, there was a general fear of transiting the city. The presence of armed Iraqi soldiers inside hospital premises conducting identification checks, as well as the positioning of armoured personnel carriers and tanks in front of medical facilities, served to discourage individuals from visiting hospitals for fear of being arrested.

Persons requiring emergency medical care could not get to hospitals because of limited ambulance services. In addition, because of fuel rationing and the vandalizing and theft of automobiles, other means of transportation to medical facilities were also restricted.

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[229] Kälin Report, at paras. 190-191.

[230] Id., at para. 51.

d) Accidents

Deaths in this category resulted both from accidents that took place during the period of the occupation, such as collisions with military vehicles, and those which occurred outside of Iraq or Kuwait while individuals were fleeing those countries.

A number of people died from heat strokes, heart attacks, dehydration and other similar causes in their flight across the desert or during their stay in camps. Others were killed by Iraqi soldiers as they sought to avoid capture by desert patrols, or as a result of mine and ordnance explosions. Generally, the persons falling into this category were non-Kuwaitis.

b. Claims in First Instalment

The table below gives the total number of "C3" claims in the First Instalment by submitting country. The First Instalment represents a small portion of the total number of "C3" claims, which currently is expected to range from 2,000 to 4,000.

NUMBER OF "C3" CLAIMS IN FIRST INSTALMENT BY COUNTRY	
Kuwait	4
Pakistan	4
Poland	1
United Kingdom	2
United States	1
TOTAL	12

c. Framework for Recommendations

1) Governing Council Decisions

The following Governing Council Decisions are specifically applicable, in whole or in part, to "C3" damages arising from death.

a) Decision 1

As noted previously, Decision 1 states that payments of up to US$ 100,000 "are available with respect to death . . . as a result of Iraq's unlawful invasion and occupation of Kuwait."[231] It also provides that "[c]laims must be for death . . . or other direct loss to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait."[232]

b) Decision 3

Decision 3 states, inter alia, that in addition to compensation for "pecuniary losses (including losses relating to income and medical expenses) resulting from mental pain and anguish," compensation will be provided for "non-pecuniary injuries resulting from such mental pain and anguish." Pursuant to this Decision, the events giving rise to MPA include the death of the claimant's spouse, child or parent, and the witnessing of the intentional infliction of events leading to the death of such persons.[233]

c) Decision 8

This Decision records the ceiling amounts applicable to compensation for MPA. With respect to the MPA categories specified on the "C3" loss page, the Governing Council has set the following limits: US$ 15,000 for the death of the spouse, child or parent, with a ceiling of US$ 30,000 per family unit; US$ 2,500 for witnessing the intentional infliction of events leading to the death of the family member, with a ceiling of US$ 5,000 per family unit.[234]

2) Government Submissions in Response to Article 16 Reports

A number of governments have submitted comments in response to issues relating to damages arising from death raised in reports issued pursuant to Article 16 of the Rules. Some of these issues have been stated in relation to the "B" category of claims, but they are also relevant to the resolution of "C3" claims.

Several governments, including that of Iraq, have commented on the question of the compensability of deaths caused by the lack of medical care in Kuwait after 2 August 1990, discussed in the First Report Issued Pursuant to Article 16 of the Rules.[235]

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[231] Decision 1, at para. 14.

[232] Id., at para. 18. Note that this Decision also establishes standards for claims for death in category "B".

[233] Decision 3, at pp. 2-3.

[234] Decision 8, at p. 2. As discussed above, Decision 8 further provides that compensation for MPA is payable cumulatively "where more than one situation applies with respect to particular claimants," subject to an MPA ceiling of US$ 30,000 per claimant and US$ 60,000 per family unit. Id., at p. 3.

[235] Article 16 Report No. 1, at para. 7.

In response to the Third Report Issued Pursuant to Article 16 of the Rules,[236] a number of governments, again including that of Iraq, have contributed views on issues relative to the death of new-born babies, premature deliveries, and unwanted or forced abortions due to the prevailing conditions in Kuwait during its invasion and occupation.

Several governments, including the Government of Iraq, have responded to various questions that were raised in the Fourth Report Issued Pursuant to Article 16 of the Rules in connection with claims for MPA relating to a family member.[237]

Finally, the Panel notes that a number of the questions raised and responses received with regard to "C2" personal injury losses are also relevant to "C3" damages arising from death. Reference is made to the description of these issues and comments contained in Part IV, section B.2.c.2), supra.

In arriving at its views, the Panel has carefully considered all of the comments thus contributed.

3) Claim Form

Having first requested the "full name" and the "official identification number" of the deceased, the "C3" page of the claim form requires that the claimant indicate his or her "relationship to deceased," inviting a choice between spouse, child and parent. In connection thereto, the claimant is further requested to attach a copy of a marriage document, birth certificate or "any other official record."

Regarding the cause of death, the loss page requires that the claimant specify "how did the deceased die" and indicate the date of death. It also contains an instruction to attach "appropriate documentation such as a photocopy of a death or burial certificate and a separate statement describing the cause and circumstances of death."

A number of questions have been designed with a view to the assessment of the loss of support income. In addition to the "occupation of deceased," the form requires that the "employer name" be stated. The claimant is also required to indicate the amount of earnings of the deceased during the 12 months prior to 2 August 1990, as well as the amount of monthly support the claimant had received from the deceased during this period.

With regard to the amount of the claim, the "C3" page requires that the claimant record the currency and amount of "support," "medical expenses," "burial expenses," and "other expenses," as well as the total "value of loss."

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[236] Article 16 Report No. 3, at para. 11.

[237] Article 16 Report No. 4, at para. 24.

Finally, space is provided for the claimant to record that he or she is (also) presenting a claim for compensation of MPA. The "C3" page invites the claimant to indicate whether the claim filed is based on the death of the family member, or on witnessing the intentional infliction of events leading to that death, and also stipulates that this category of claim "must be substantiated by appropriate evidence of the death and its circumstances."

d. Processing Considerations and Methodology

1) Introduction

Within the parameters set by the applicable Rules and Governing Council Decisions, taking into account the views expressed by governments, and on the basis of the information that has been provided in response to the claim form and of that which has become available from other sources, the Panel has reviewed the "C3" claims in the First Instalment.

A description of the most important issues raised and specific considerations which, in addition to the factors set out above, have contributed to the Panel's recommendations for these losses is provided below. The extent to which these principles and procedures will need to be further developed will depend on the characteristics of future instalments of "C3" claims.

While the limited size of the First Instalment of "C3" claims has enabled a more detailed review of evidence, the Panel has endeavored to develop criteria that lend themselves to the processing of such claims on a standardized basis. In setting these criteria, the Panel has consistently borne in mind the applicable general evidentiary standard laid down in Decision 1. As noted in Part III, section E, supra, this Decision records the Governing Council's determination that claims "must be documented by appropriate evidence of the circumstances and the amount of the claimed loss," which will be "the reasonable minimum that is appropriate under the circumstances involved."[238]

The Panel's recommendations regarding compensation for MPA draw upon the expert advice referred to in Part IV, supra.[239] In its implementation of these guidelines, the Panel has continued to benefit from the assistance of its expert consultant, Dr. Sartorius.

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[238] Decision 1, at para. 15 (a).

[239] See MPA Report, Annex VI.

2) Family Relationship

As provided on the "C3" page of the claim form and, for claims based on MPA, as set out in Decision 3, the claims must relate to the death of the claimant's spouse, child or parent. The Panel's discussion of the definition of "family unit" which is enunciated in Part II, section C.4.d, supra, gives further meaning to these terms.

As a result of the invasion and occupation, many documents have been destroyed or left behind in Kuwait or Iraq. The Panel observes that, nevertheless, claimants in the First Instalment have managed to submit copies of marriage and birth certificates and similar items of proof. Copies of their own identity documents as well as, in many cases, those of the deceased have also been produced. In the Panel's opinion, read in conjunction with the personal statements that have been provided, these documents constitute reasonable evidence of the family relationship. Further confirmed by the certificates referred to in section 3, infra, they also serve to establish the identity of the deceased.

3) Fact of Death

The Panel next determined whether the claimant has established the fact of death of the family member. All claims in the First Instalment are supported by death or burial certificates or by other documentation issued by an official authority confirming the fact of death. Concurring with the considerations which the "B" Panel of Commissioners has expressed on this subject, the Panel regards such documents as sufficient proof of the fact of death.[240]

Considering the conditions under which persons have died, the Panel expects future instalments to include a number of claims that will be accompanied by evidence of a lesser quality than that which characterizes the First Instalment.[241] Evidentiary standards, appropriate to the circumstances of such cases, will need to be developed.

4) Cause of Death

As noted previously, resolution 687 of the Security Council reaffirms Iraq's liability for any direct loss, damage or injury resulting from its unlawful invasion and occupation of Kuwait.[242]

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[240] "B" Recommendations, at pp. 39-40.

[241] Reference is made in this regard to the evidentiary impediments described in Part IV, section B.2.d.3) on the subject of personal injury.

[242] Resolution 687, at para. 16.

Inasmuch as Decision 1 establishes death as a direct loss,[243] it remains for the Panel to verify, for each individual case, the presence of a causal relationship with the invasion.

Of obvious significance for this purpose is the period between 2 August 1990, marking the beginning of the invasion, and 2 March 1991, being the date of adoption of Security Council resolution 686 and considered the official date of the cease-fire between the Allied Coalition Forces and Iraq. Consistent with the causation categories enumerated in Decision 1,[244] and taking into account the data contained in the Kälin Report and other relevant documentation,[245] the Panel considers it realistic to presume that a substantial number of the deaths which have occurred in Iraq or Kuwait during this period are likely to be attributable to Iraq's activities associated with the invasion and occupation. Indeed, for certain instances of death, this presumption is not limited to the occupation period: even if they have occurred after the cessation of hostilities, deaths resulting from causes such as mine explosions may be attributable to Iraq.

The methodology employed by the Panel to verify the existence of the required causal relationship reflects these considerations. Where the causal link with Iraq's actions is implied by the cause of death, such as torture or execution, the Panel finds no additional need for explicit evidence to that effect. In all other cases, a statement by the claimant mentioning or implying such causal link, whether provided on the claim form or separately, creates a presumption that the death may be attributed to Iraq. This presumption is rebuttable on the basis of information in the file, however, and the claims have therefore been subjected to further review for indications that Iraq cannot be held responsible. One of the most significant factors the Panel has considered in this regard is the medical cause of death as stated in the death certificate or as explained in other documentation.

A number of claims have raised the issue whether deaths resulting from road accidents are attributable to Iraq. Bearing in mind the considerations which the "B" Panel of Commissioners has expressed on this subject,[246] the Panel in the case of the First Instalment has developed guidelines that allow the particular circumstances of each case to be taken into account. In addition to the parties involved, these include the date, location and immediate cause of the accident. Consideration of these factors has led the Panel to recommend that a number of claims in the First Instalment be rejected.

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[243] Decision 1, at para. 18.

[244] Id.

[245] See n. 221, supra.

[246] "B" Recommendations, at pp. 24, 25.

Deaths allegedly caused by lack of medical treatment of pre-existing conditions also received careful consideration, with the assistance of a medical expert where necessary.

5) Compensation

As noted previously, individuals may claim for medical, burial and other expenses and for the loss of support resulting from the death of their spouse, child or parent, and for MPA caused by their witnessing of the intentional infliction of events leading to that death, or resulting from the fact of the death.

a) Expenses

The First Instalment contains only two claims seeking compensation of burial expenses, and, with the exception of one of the claims proposed to be rejected for failure to meet the causal requirement discussed in section 3, supra, none for medical or other expenses. Accordingly, the Panel's assessment as to whether the amount claimed for expenses has been established is based on an individual review of the evidence in the relevant files.

b) Support

The First Instalment includes a number of claims based on the loss of support caused by the death of the dependent's spouse, child or parent. The Panel is mindful of the absence of Governing Council guidelines and compensation ceilings specifically applicable to this type of loss. Review of the First Instalment indicates that some of these claims have been prepared in a methodological fashion, while others lack a uniform basis. In particular, the period of lost support income on which the amount of the claim is based has been determined in different ways. Indeed, lacking proper guidance, some claimants have not even stated a total amount, but have merely indicated the monthly support they had received previously.

Even if, for the reasons explained in section 4), supra, a number of these cases are proposed not to be awarded, the resulting diversity of the support claims has necessitated the development of a standardized compensation methodology. The methodology thus created draws upon generally accepted actuarial principles, and also takes into account the absence of specific evidentiary and calculation instructions on the "C" claim form. In general terms, it may be described as follows.

Having observed the amount of monthly support the claimant used to receive, the Panel has ascertained whether this amount is reasonable in relation to the earnings of the deceased. This assessment takes account of the nature of the family relationship, i.e., whether the claimant was the deceased's spouse, child or parent, and reflects whether the claim has also been filed on behalf of other dependents, such as the claimant's children.[247]

Actuarial guidelines also allow for the assessment of the period during which the dependent would have continued to receive the support amount thus determined. The difficulties inherent in future projections for individual cases require the employment of an objective methodology which is both conservative and fair. The criteria applied by the Panel in order to determine the applicable period of support include the type of family relationship between the dependent and the deceased, their age and normal life expectancy, and the normal retirement age that would have applied to the deceased.

The resulting period has been applied to the support income assessed previously. In accordance with general rules of valuation, in order to calculate the present value of the total future stream of support income thus projected, the Panel has introduced a discount factor. The rate of the discount is designed to incorporate such factors as the time value of money, inflation, and the risk that the dependent's receipt of support would have been interrupted. For example, the deceased might have lost his or her source of income, or might have died early from a cause unrelated to the invasion and occupation; the surviving spouse might have remarried or found employment, or might have died shortly after the deceased; or, at the other end of the spectrum, the spouse might have relied fully on the deceased person's income for a very long time to come. Reflecting an increase in the risk factor over time, the discount rate goes up with the period of support income determined to be appropriate.

Finally, it should be noted that the resulting recommendations take account of the compensation limit of US$ 100,000 applicable to category "C" claims.

c) MPA

Pursuant to Decision 3, it has been explained that claimants are entitled to compensation for MPA caused by their witnessing of the intentional infliction of events leading to the death of their spouse, child or parent, or resulting from the fact of the death as such. Considering the gravity and distressing nature of these situations, the MPA Report notes that there is well-established evidence that all such events cause severe MPA.[248] Accordingly, the Panel observes that, once the fact of the death has been proven, the presence of MPA may reasonably be assumed.

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[247] If the prior monthly support figure is not supplied, then the prior earnings of the deceased should be reduced to reflect certain actuarial assumptions regarding the amount of support the deceased would have contributed to the particular family member who is claiming.

[248] MPA Report, at p. 14.

Decision 8 affirms the Governing Council's decision to adopt ceilings rather than fixed amounts for compensation for instances of MPA.[249] In order to assist in the determination of the recommended amount of compensation, the MPA Report provides a number of relevant considerations, culminating in a list of differentiating criteria. These so-called "modifying factors" allow the compensation to be adjusted in accordance with certain readily observable and objective standards that are intended to reflect different degrees of MPA suffered by claimants.

As foreseen in Decision 8[250] and recommended by the MPA Report,[251] in a number of cases the amount of payment recommended by the Panel is the cumulative result of compensation for the event of the death as well as for witnessing the intentional infliction thereof.

(i) MPA from Death

The Panel has reached its recommendations for this category of MPA on the basis of the relevant modifying factors, to which it refers.[252] Whether such modifying factors apply has been determined by a review of all parts of the claim file, ranging from each of the loss pages to statements and other evidence attached to the form.

(ii) MPA from Witnessing Death

Determination of the recommended amount of compensation for this category of events has required the resolution of several preliminary issues.

Expanding on observations made in the MPA Report, Dr. Sartorius has explained that, due to their damaging nature, situations such as those to which this type of claim pertains in many cases are unlikely to have been described other than on the claim form[253]. The Panel's assessment as to whether the claimant has established the fact of witnessing takes account of these considerations.

A further issue the Panel has had to address in connection with these claims is whether the facts indicate that the death was intentionally inflicted. The difficult nature of this question has necessitated a careful study of the particulars of each case. Foremost among these is the cause of death: deaths such as those resulting from torture, execution and aggravated physical assault may be presumed to have been caused intentionally.

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[249] See section c.1.(c), supra.

[250] Decision 8, at p. 3.

[251] MPA Report, at p. 17.

[252] MPA Report, at pp. 20-21.

[253] See also Part IV, section 2.d.5)b)(ii), supra.

The Panel's compensation recommendations for this category of MPA events are guided by the relevant observations made in the MPA Report.[254] The Panel makes reference to these observations.

Based on the considerations and applying the principles described in this section, the Panel reaches the recommendations for "C3" death losses referred to in Part V and the Annexes, infra. These recommendations take into account compensation that may have been awarded to claimants who have also filed a claim in category "B".

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[254] The Panel notes again that it has not been able to follow the recommendation, at page 23 of the MPA Report, that persons who were forced to witness the intentional infliction of death on a family member also qualify for compensation of MPA resulting from an incident of torture. As observed in Part IV, section B.2.d.5)b)(i), supra, the Panel's reluctance in this regard is motivated by the fact that the implementation of this particular recommendation might be incompatible with the fact that Decision 8 establishes a ceiling amount for such witnessing events.

4. Loss Type "C4": Personal Property Losses

a. Personal Property Claims

Decision 1, paragraph 14, provides that compensation payments are available for losses of personal property directly resulting from Iraq's unlawful invasion and occupation of Kuwait.[255] Page "C4" of the claim form enables claimants to submit claims for personal property losses, including losses of clothing, personal effects, household furnishings, other personal property items not included in the foregoing categories, as well as for losses related to motor vehicles.[256]

This section of the Report discusses the Panel's factual, legal and processing considerations in developing its methodology and criteria for personal property claims; the Panel's methodology for reviewing claims under this loss type; and the substantive criteria applied by the Panel to verify and compensate personal property claims, in general, and more specifically for personal property claims in the First Instalment. It also sets forth the Panel's compensation recommendations for personal property claims in the First Instalment.

1) Summary of Relevant Facts

The main factual considerations relevant to the Panel's methodology and criteria are summarized below. Further factual details considered by the Panel are reported in the referenced documents.

a) Patterns of Personal Property Ownership in Iraq and Kuwait[257]

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[255] Decision 1, para. 14.

[256] The Panel's methodology for evaluating and compensating motor vehicle-related losses is discussed in the next section. All references to "personal property" claims or losses in this section should be interpreted as personal property claims exclusive of motor vehicle-related losses.

[257] The main sources consulted by the Panel regarding patterns of personal property ownership in Iraq and Kuwait included the following: *Annual Statistical Abstract 1990/1991*, Central Statistical Office, Ministry of Planning, Kuwait; *Statistical Abstract in 25 Years*, Central Statistical Office, Ministry of Planning, Kuwait; *Family Budget Survey 1986/1987*, Central Statistical Office, Ministry of Planning, Kuwait; *Business Environment and Practice in Kuwait - Final Report*, prepared for the Public Authority for the Assessment of Compensation for the Damages Resulting from Iraqi Aggression ("PAAC") by Arab-Dar Consultants (December 1993); Khalaf, B., *Assessment of the Stock of Kuwaiti Household Assets Prior to the Iraqi Invasion*, Kuwait Institute of Scientific Research, May 1994, submitted to the United Nations Compensation Commission by PAAC; Al-Moosa, AbdulRassool and McLachlan, *Immigrant Labour in Kuwait*, Croom Helm Ltd, Sydney, Australia (1984); Gunatilleke, G. (ed.), *Migration to the Arab World -- Experience of Returning Migrants*, United Nations University Press (1991); The Economist Intelligence Unit (EIU-93/94), *Iraq Country Profile 1993-1994: Annual Survey of Political and Economic Background*. The Panel also took into account information submitted by several countries in response to a questionnaire issued by the secretariat regarding

(i) Expatriate Claimant Population

An estimated 2.6 million expatriate workers from more than 70 countries were living and working in Iraq and Kuwait prior to the invasion. The expatriate worker population in both countries was economically very active. Expatriate workers were employed in all sectors of the Iraqi and Kuwaiti economies, in a wide range of occupations, and at all levels of the professional hierarchy. Studies have shown that as a result of relatively high income levels, expatriate workers at all levels often were able to accumulate considerable amounts of personal property.

(a) Low-Skill Occupations

The majority of the expatriate worker population were employed as domestic servants, agricultural workers, manual labourers, drivers, dishwashers in restaurants, janitors and in similar occupations not requiring specialized skills. For the most part, workers in this category were from Asian countries such as Bangladesh, India, Pakistan, the Philippines, and Sri Lanka, as well as from Arab countries including Egypt, Jordan, Syria and Yemen.

The average length of stay for these workers was between 8 and 10 years. Typically, in order to maximize savings and remittances, workers in this category travelled to Iraq and Kuwait without their families and shared accommodation with other low-skilled workers if accommodation was not provided by their employer.

Notwithstanding a relatively low income level, low-skilled workers often owned considerable amounts of personal property. While it was common practice for workers to remit most of their income to their families, a significant percentage frequently was retained for purposes of "investment" in personal property items. Such savings or investments were often accumulated in the form of electronic and electrical items and jewellery, which were periodically transferred to the worker's home during home leave, or at the end of the worker's term of employment. Common items of personal property owned by workers in this category included televisions, radios and cassette players, refrigerators, portable stoves, inexpensive clothing, modest amounts of jewellery, bedding and blankets, kitchenware and utensils, and other modest personal effects.

(b) Skilled and Semi-Skilled Occupations

Workers in this category included carpenters, electricians, plumbers, foremen, clerks, unskilled office workers, government labourers, cooks, tailors, nurses, sales people, and computer

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the socio-economic characteristics of their respective claimant populations, as well as supplementary material submitted by a number of governments with their claims.

operators. They were chiefly Bangladeshis, Egyptians, Indians, Pakistanis, Palestinians, and a small percentage of Americans and Europeans. On average, workers in this category stayed in Iraq or Kuwait for 3 to 5 years, and resided in these countries with their families. Often enjoying an array of employment-related benefits and above-average incomes, semi-skilled and skilled workers accumulated substantial amounts of property. Typically, a worker in this category owned electrical appliances, including one or two televisions, a video player, stereo equipment, and household appliances; complete but inexpensive household furniture; clothing; modest amounts of jewellery and luxury items; and at least one automobile.

(c) Highly Skilled Occupations

Workers in this category typically included persons with specialized skills and knowledge such as doctors, scientists, university teachers, nurses, computer technicians, engineers, lawyers, finance specialists, etc. For the most part, these workers were of Arab-origin, including large numbers of Egyptians and Palestinians, and a small percentage of Asians. The vast majority of expatriates from Europe and the United States were employed in highly skilled occupations.

The average stay for workers in this category was two to five years. Most resided in Iraq and Kuwait with their families. The relatively high incomes and generous employment-related benefits enjoyed by this category, enabled highly skilled workers to occupy comfortable villas, furnished accordingly. Typically they owned substantial amounts of personal property, including a relatively large amount of luxury items and jewellery, a wide range of high-end household durables and furniture, expensive personal effects and more than one motor vehicle.

(ii) Kuwaiti Nationals

Prior to the invasion -- and even today -- Kuwaiti citizens enjoyed one of the highest per capita incomes in the world. Augmented by generous state support programmes -- including free health care and education, heavily subsidized housing and government-sponsored home mortgage schemes -- Kuwaiti citizens were able to obtain a high level of discretionary income. This enabled them to spend considerable sums of money to sustain a very high standard of living, which included several automobiles, modern and spacious homes, substantial items of jewellery and a variety of consumer goods.

Kuwaiti families and households, typically, are large in size. Together with the relatively high level of personal wealth, housing for Kuwaitis generally means a single-family villa, or a shared villa. Apartment dwelling for a Kuwaiti family is virtually non-existent. The sophistication and high cost of the residential units are reflected also in the furnishings, which include expensive carpets and rugs, and modern appliances. A typical Kuwaiti house may have several television sets, videos, stereos, radios, washing machines and dryers, as well as modern kitchen appliances and nicely furnished rooms. Many include a satellite TV system and multiple garages to accommodate family cars. Surveys reveal that in recent years the average Kuwaiti household spent more than US$ 6,000 per year on home-related products, accounting for more than 15 percent of the total annual family budget.

According to one report providing an estimate of the stock of assets in the possession of Kuwaiti households prior to the Iraqi invasion, the total value of those assets was in the region of US$ 4.8 billion, or approximately US$ 61,000 per household. Jewellery was the major expenditure item, accounting for approximately US$ 2 billion, or slightly less than half of the total stock of assets among Kuwaiti households. This high ratio reflects the consumption behaviour of a large section of the population in accumulating gold and jewellery as a form of savings and investment. Furniture and furnishings ranked second, accounting for approximately one-third of the total stock of assets. Electrical appliances, clothing and footwear accounted for slightly more than one-third of the total stock.

b) Personal Property Losses During the Invasion and Occupation

(i) Kuwait

According to several reports, the main causes of personal property losses in Kuwait were the looting and vandalism of personal and real property by members of the Iraqi occupying forces, pursuant to official orders, as well as unofficially.[258] The United Nations Reports state that the seizure and destruction of private and public property -- particularly from warehouses, government ministries, public buildings, factories, plant sites and the private residences of well-known Kuwaitis -- was carried out under specific plans and orders issued by the Iraqi authorities.

The more indiscriminate looting and vandalism of property, accounting for the bulk of personal property losses, is reported to have taken place at the "unofficial" level. According to the United Nations Reports, Iraqi soldiers on patrol and conducting door-to-door searches systematically ransacked entire neighbourhoods.[259] Houses, apartments, offices, warehouses and similar places left untended by persons who had departed, were specifically targeted; however, occupied homes were not spared.[260] The United Nations Reports indicate that whatever property could not be carried away during an initial visit was left for subsequent visits or destroyed. All forms of property were removed, but specifically targeted were expensive items such as electronic appliances, paintings, and jewellery. Items of personal property were often damaged while soldiers searched for more valuable booty, or for persons in hiding. On other occasions, off-duty Iraqi soldiers and members of the Iraqi civilian population are reported to have taken or damaged private property.

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[258] Regarding the facts relevant to the main causes of personal property losses in Kuwait and Iraq as a result of Iraq's invasion and occupation, the Panel relied principally on the following United Nations-sponsored reports: Ahtisaari Report, Kälin Report, Farah Report (collectively the United Nations Reports). Additional facts relevant to personal property losses are described in the section on "C7" real property losses. See Part IV, section B.7., infra.

[259] Iraqi officials occasionally declared whole neighbourhoods off limits to residents to enable soldiers to remove household goods and property without the knowledge of their owners and without their resistance.

The United Nations Reports state that further damage to private property occurred at various times during the invasion and occupation of Kuwait as the Iraqi military damaged and destroyed private and public buildings.

Iraqi military forces are also reported to have confiscated the possessions of persons seeking to leave Iraq or Kuwait following the invasion. The United Nations Reports note that such persons allegedly were stripped of their possessions at the border, or were forced to sell valuables at prices considerably below their market value. The principal victims of such actions appear to have been foreign nationals, particularly women from Asian countries.

Looting by certain segments of the civilian population who remained in Kuwait during the occupation, and following the withdrawal of Iraqi troops from Kuwait, contributed significantly to personal property losses. The breakdown in civil order, along with the mass exodus of the Kuwaiti and non-Kuwaiti population, provided those who remained behind with considerable opportunities to loot property. Additional causes of personal property losses include damage to personal and real property during the Allied Armed Forces offensive against Iraq, environmental conditions in Kuwait resulting principally from smoke from burning oil wells, and clean-up operations in Kuwait following the country's liberation from Iraqi occupation.

All of these reports of looting and destruction corroborate the statements provided by claimants in the sample claims reviewed by the Panel which contain similar factual descriptions.

(ii) Iraq

As discussed more fully above, Iraq's invasion of Kuwait precipitated a mass exodus of persons living in those two countries. Expatriate workers of all nationalities who were living and working in Iraq at the time departed the country, often under circumstances of the utmost urgency. As a result, very little, if any, personal belongings could be, or were, transported out of the country as these persons left Iraq. The bulk of the expatriate population who departed Iraq at the time of the invasion of Kuwait has not returned to the country either as a matter of choice or circumstance. Personal property also was lost by individuals held as "human shields" by the Iraqi authorities.

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[260] See infra,Part IV, B.7, for a discussion of the danger to and destruction of real property. In Kuwait City alone, approximately 120,000 housing units were looted or vandalized. In Al Ahmadi about 35,000 residential units were ransacked, as were some 18,000 units in the Governorate of Jahrah.

c) Extent of Personal Property Losses

No independent estimate, measured in monetary terms, has been made of the extent of personal property losses suffered as a result of Iraq's invasion of Kuwait. Several reports and accounts considered by the Panel, however, indicate that the damage to personal property was on a massive scale. Based on the more than 400,000 category "C" claims filed with the Commission, the several thousand category "D" claims also filed, information provided to the Commission by several governments, and the fact that there were more than 2.5 million expatriates living and working in Iraq and Kuwait prior to the invasion of Kuwait, it is likely that total personal property losses will have exceeded US$ 10 billion.

2) Claims in First Instalment

a) Overview of Claims

Personal property losses are the most common type of claim submitted in the First Instalment of category "C" claims, and appear to be the most frequent type of claim made, in general. The Panel expects to process over 350,000 personal property claims from more than 60 countries. In the First Instalment, the Panel considered and resolved 2,457 of these claims from 17 countries. The asserted value of the personal property claims in the First Instalment is approximately US$ 36 million. A statistical profile of these claims is set out in the table below.

NUMBER OF "C4" PERSONAL PROPERTY CLAIMS IN FIRST INSTALMENT BY COUNTRY

Country	"C" Claims in 1st Instalment	Personal Property Claims in 1st Instalment
Australia	56	48
Bahrain	25	5
Bolivia	1	1
Brazil	12	8
Denmark	28	24
France	4	1
Great Britain	186	105
Japan	5	0
Jordan	6	0
Kenya	1	1
Kuwait	1070	938
F.Y.R. of Macedonia	4	4
Malaysia	1	1
Nepal	3	2
Pakistan	1105	1047
Poland	38	21
United States	268	193
F.R.Y. (Serbia & Montenegro	59	56
South Africa	2	2
TOTALS	2874	2457

Approximately 78 percent of First Instalment claimants submitted personal property claims ranging from US$ 2,500 to 20,000, with slightly more than 60 percent of these claimants filing for amounts between US$ 2,500-10,000. Almost 2 percent of the claimant population filed claims for more than US$ 20,000. The remaining 10 percent claimed below US$ 2,500. A breakdown of the number of claimants by range of amounts claimed and the corresponding percentages is provided below:

Amounts Claimed (US$)	No. of Claimants (%)	
Below 1000	43	(2)
1000-2500	202	(8)
2500-5000	497	(20)
5000-10000	674	(27)
10000-15000	405	(16)
15000-20000	343	(14)
20000-30000	102	(4)
30000-40000	63	(3)
40000-50000	38	(2)
50000-75000	49	(2)
Over 75000	41	(2)

b) Description of Claims

Based on the sample claims reviewed, personal property claims in the First Instalment appear to be very diverse in terms of the type and quality of evidence submitted in support of the claims, the manner in which the claims were prepared, the type and value of the items for which claims have been submitted, and the total amounts claimed. Claims have been made for a wide range of items, including clothing and footwear, furniture, fixtures, carpets and floor coverings, textile furnishings, ornaments, paintings and decorations, glassware, tableware, china, kitchenware and utensils, television sets, videos, radios, stereo equipment, cameras, heating and cooling appliances, refrigerating appliances, washing machines and dryers and other household appliances, as well as for jeweller, and for an unlimited variety of personal effects. Information submitted to the Panel by the secretariat suggests that this diversity is likely to be reflected in the claims in subsequent instalments.

Claimants in the First Instalment most frequently claimed for clothing losses (85%) and for losses of household furnishings (88%). Approximately 60 percent claimed for losses of personal effects, and 29 percent for sundry items, including luxury items such as antiques, carpets, gold, and jewellery.

The diversity observed in the claims is attributable to several factors, inter alia: (a) the Iraqi invasion and occupation of Kuwait had a different impact on each claimant; (b) individuals had different property accumulation perspectives based on factors such as their duration of stay in Kuwait or Iraq, their intended duration of stay, disposable income, profession and professional status, age, sex, family status, cultural and social background, etc.; (c) claimants may not have been provided with appropriate instructions as to how the "C4" page of the claim form should be completed, or regarding the format and substance of the supporting documentation;[261] and (d) the extent to which officials working in the national claims programs of the more than 60 countries that have submitted claims were involved in the preparation of the claims.

c) Socio-economic Profile of Claimant Population

Almost three-quarters of First Instalment personal property claimants, including Kuwaiti and non-Kuwaiti claimants, are male. Of these, slightly over 60 percent have indicated that they are married. Less than 50 percent of non-Kuwaiti claimants travelled to Iraq or Kuwait with their families, while the majority of Kuwaiti claimants were married. The relatively low number of non-Kuwaiti claimants who were accompanied by their family members is due to the fact that, in this instalment, Pakistanis low-skilled workers represent a large percentage of the claimant population. Generally, such expatriate workers in the low-skill category were not accompanied by their families. In contrast, almost 100 percent of the claimants from countries such as Australia, Denmark, Great Britain, Poland and the United States were accompanied by their families. The average age of claimants in this instalment is 38 years.

The claims indicate that the average length of stay for claimants from Pakistan who were residing in Kuwait is approximately 6.5 years; and three years for those residing in Iraq. The average length of stay for all other non-Kuwaiti claimants in Kuwait is 2.5 years; and less than two years for those residing in Iraq. The vast majority of First Instalment claimants were resident in Kuwait.

Over 85 percent of non-Kuwaiti claimants in the First Instalment were employed. Sample claims reviewed indicate that these claimants were employed in all sectors of the Kuwaiti economy, and in a variety of occupations ranging from drivers, gardeners, shopkeepers, barbers and domestic servants, to teachers, clerical workers and sales personnel, to accountants, engineers, professors and doctors. Claimants who were resident in Iraq were primarily employed as day labourers in the oil and construction industries; exceptionally, there were several claimants in supervisory and technical positions. Information regarding income levels and terms of employment is provided in section B.6., infra.

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[261] Part III, section D.3., supra, for a discussion of the problems faced by claimants in the preparation and presentation of their claims.

3) Processing Considerations and Methodology

a) General Considerations

In addition to the general considerations discussed above, several factors contributed to the processing methodology adopted for personal property claims. First, while the Governing Council has issued no specific guidance regarding methods for processing and compensating personal property claims, Article 37 of the Rules generally authorizes the use of sampling to verify claims where the number of claims is large. Second, in excess of 350,000 personal property claims have been filed with the Commission. The claims are extremely diverse in terms of the types of evidentiary items submitted, the items that form the basis for the claims, and the amounts that have been claimed. Third, these claims are "urgent claims", and as such the Governing Council has mandated that they be processed on an expedited basis. Finally, the Panel took into consideration the fact that the number of personal property claims in the First Instalment is relatively small in comparison to the total population of such claims to be reviewed in future instalments.

This last factor deserves elaboration. As noted above, whereas over 350,000 claims for personal property losses are likely to be submitted to the Commission from more than 60 countries, in the First Instalment the Panel considered only 2,457 of these claims from 17 countries. The claims in the First Instalment thus represent less than one percent of the total personal property claims the Panel is likely to consider, and may be less than fully representative of the larger population of personal property claims. Therefore, of necessity, the criteria set forth herein for verifying and compensating the claims are applicable primarily to the claims in the First Instalment. Where possible, the Panel has made an effort to establish criteria that may be relevant to the claims in future instalments. The extent to which these criteria will require further development will depend on the characteristics of the claims in those instalments.

An individualized review of each claim might have been warranted in light of the diverse nature of the claims, as well as by the claimants' efforts to prepare their claims. For approximately 350,000 personal property claims, however, a methodology involving a claim-by-claim review, or any reasonable variation thereof, is likely to require significant processing time[262], which would be contrary to the Governing Council's mandate that "urgent claims" be processed on an expedited basis. Accordingly, the Panel has adopted a methodology for personal property claims entailing

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[262] According to an estimate made by the secretariat, it would take between 11 and 15 years to process the claims using a methodology requiring an individualized review of the claims and of the attached documentation.

(1) the grouping of claims presenting similar factual and legal issues; (2) the individualized review of sample claims from the relevant groupings; (3) the analysis of statistical data regarding the claims, and specifically the evidentiary patterns and amounts claimed; (4) the extrapolation of its findings with respect to sample claims to the non-sampled claims; and (5) additional verification of individual claims only where deemed absolutely necessary.

b) Applicable Standards

The general standards and requirements established by the Governing Council that claimants must satisfy are set forth in Decision 1 and in Article 35 of the Rules, discussed in Part II, supra. Regarding personal property claims, page "C4" of the claim form instructs claimants to "[a]ttach appropriate documentary evidence establishing ownership of the property items and explain the method of valuation used." It also states "attach documentation and separate itemized list for major items, including purchase prices and dates of purchase."

c) Relevant Issues and Criteria

To give effect to the Governing Council's guidelines and standards, the Panel reviewed the claims to verify that claimants had established (1) the fact of ownership of the personal property items on which their claim was based; (2) the fact of their loss and that their loss was causally related to Iraq's invasion and occupation of Kuwait; and (3) the value of their claim.

In this regard, the Panel reviewed the evidence attached to individual sample claims taken from the First Instalment, statistical data regarding the patterns of evidence submitted with the claims, and specific background information relevant to assessing the materiality, relevance and weight to be accorded to the various evidentiary items submitted. With the secretariat's assistance, the Panel confirmed that the sample claims were representative of the total population of First Instalment personal property claims.

(i) Fact of Ownership

Approximately 95 percent of personal property claimants in the First Instalment provided evidence in support of the fact of ownership of the items claimed. The most commonly submitted forms of documentation were inventory or itemized lists,[263] personal statements[264] and witness statements,[265] as well as receipts, invoices, bills, packing and shipper's lists for some of the items claimed.

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[263] **Inventory or Itemized List**: Almost 90 percent of First Instalment claimants provided at least an inventory list in support of their claims. Claimants either provided a separate list itemizing the personal property items being claimed for, or listed the items directly on the claim form. Inventory lists provided as a separate document ran the gamut from being very rudimentary in form and simple in substance, to very detailed lists that provide the make, model and year of purchase of the claimed items together with a corresponding value for each item. Regardless of the sophistication of the list, however, an insignificant percentage of claimants indicated the valuation basis for the items

Generally, the best form of evidence to prove ownership are receipts, bills, invoices and similar forms of primary documentation. In the First Instalment, 15 percent of the claimants provided such documentation. This may be attributed to, inter alia:[266]

(1) the inherent difficulty of documenting claims for personal property items. Documentation such as receipts, invoices, bills, insurance and packing lists for items that are used in everyday affairs and life are seldom kept, unless there are specific reasons for doing so. Cultural and socio-economic factors often contribute to the likelihood of an individual claimant retaining such records. Moreover, because the personal property items are likely to have been purchased over a number of years, often in several locations, and under a variety of circumstances, it is not uncommon for persons to have misplaced or discarded the relevant documentation;

(2) business practices in Iraq and Kuwait. Certain aspects of the business culture and environment in Iraq and Kuwait are likely to have made it almost impossible for the average claimant to document his or her personal property claims. Neither Kuwait nor Iraq are economic cultures that historically have placed emphasis on documenting the acquisitions, possessions and income of individuals. By tradition, the Kuwaiti and Iraqi economies are cash-based. Personal

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claimed. Claimants also listed the items being claimed for on page "C4" of the claim form. These itemizations constituted the most basic type of list. Claimants rarely provided an itemized breakdown of the value of each item listed. It appears, generally, that claimants providing such lists would have been the least likely to have understood the requirements of the claim form, or to have been able to prepare an adequate inventory list.

[264] **Personal Statement**: Approximately 58 percent of the claimants provided a separate statement to supplement the information provided on the claim form. Based on the sample claims reviewed, personal statements typically described the claimant's living circumstances in Iraq or Kuwait prior to the invasion; the circumstances under which the claimant left Iraq or Kuwait; what the claimant found upon his or her return to Kuwait; or how the claimant learned of his or her personal property losses. Occasionally, the claimant may have explained why he or she was not able to provide primary documentation of his or her losses. A very small percentage of the statements describe the method of valuation employed by the claimant in valuing his or her claim. A significant number of claimants have described in their statement the personal property items that they allege were lost as a result of the invasion.

[265] **Witness Statement**: Over 40 percent of the claimants provided a witness statement in support of their claim. The witness statements were in the form of a separate document prepared by the witness; alternatively, the assertions contained in the claimant's personal statement or itemized list may have been attested to by one or two witnesses. Generally, the latter form of witness statements do not indicate the basis for the witness' testimony. However, often it could be inferred from the witness' name that she or he is a family member of the claimant. In these cases the Panel presumed that the witness' testimony is based on personal knowledge. Where the claimant had submitted a separate statement by a witness, the basis for the witness' testimony usually is clearly stated. In either case, the document purportedly submitted as a witness statement must have contained information relevant to the claimant's personal property claim.

[266] See supra, Part II, section E., for a general discussion of the evidentiary patterns and the factors affecting claimants' ability to produce evidence.

purchases and expenses, even involving significant sums, are often settled in cash, with little use of personal cheques or credit cards. In Kuwait, the absence of any income or wealth tax, together with the relatively low crime rate, provides little incentive for individuals to retain documentation necessary to prove the ownership and value of personal property items purchased; and

(3) the general circumstances surrounding claimants' losses which have made the documentation of claims for personal property losses all the more difficult, if not impossible, in a large number of cases. These circumstances fall into several categories: First, to the extent that claimants kept relevant records, in the majority of instances it appears that these records were destroyed or lost during the looting that accompanied the Iraqi invasion of Kuwait. Second, large numbers of claimants left Kuwait and Iraq under urgent circumstances. At the time of their departure it is unlikely that they would have had the foresight, wherewithal or concern to collect and carry documentation, to the extent that they possessed any, relevant to establishing their future claim. Third, many claimants were outside of Kuwait and Iraq when the invasion occurred. These persons are unlikely to have had documentation relevant to their claim in their possessions. Fourth, of the expatriates who left Kuwait and Iraq, a very large number have not returned to those countries, and thus, are unable to provide primary evidence in support of their losses. Fifth, Kuwaitis and expatriates who have returned, often could not gather any form of tangible evidence in support of their losses, such evidence having been lost in the massive clean-up effort that took place in Kuwait following the withdrawal of Iraqi troops.

In the absence of primary proof in the form of receipts, bills and invoices, evidence in the form of itemized lists, personal statements and witness statements constitutes the best evidence available as proof of ownership of the items claimed. Approximately 95 percent of the claimants submitted such evidence. Under the circumstances, the Panel finds that this evidence constitutes the "reasonable minimum that is appropriate" to establish the fact of ownership of the items claimed.

A small number of claimants -- less than five percent -- have provided no evidence beyond the claim form itself. In each case, the claimant was a low wage earner working as a day labourer or in domestic service. These claimants are the least likely to have understood the requirements of the claim form, or to have been able to fulfil the evidentiary requirements imposed thereby. The amounts claimed by these claimants for personal property losses were uniformly less than US$ 2,500.

In view of the low amounts claimed, the fact that these claimants were resident in Iraq or Kuwait during the relevant time period and are likely to have suffered some property losses, and taking into consideration the socio-economic status of the claimants, as well as data from external sources regarding the property accumulation patterns of persons in low wage-earning occupations, the Panel is satisfied that, as to the fact of ownership, sufficient evidence is present with respect to these claims to be considered the reasonable minimum that is appropriate under the circumstances.

(ii) Fact of Loss and Causal Relation to Invasion

Decision 1 requires that claimants' losses must have been a direct result of Iraq's invasion and occupation of Kuwait. The factual circumstances surrounding personal property losses are well-documented, and have been carefully considered by the Panel. To the extent that an individual claimant has established that he or she was resident in Kuwait or Iraq at the time of the invasion, it is likely that some form of personal property loss was suffered, and that this loss was directly related to Iraq's invasion and occupation of Kuwait. Sample claims reviewed by the Panel uniformly contained some indication that the claimant's personal property losses could be attributed to the invasion. Most commonly, claimants indicated looting and vandalism, clean-up operations, urgent departure for fear of personal safety, inability or decision not to return to Iraq or Kuwait, as the underlying causes for their personal property losses. A significant number, reflecting claimants who left Iraq or Kuwait during the invasion, did not have personal knowledge of how their personal property came to be looted or destroyed; upon their return they merely observed the damage, or had friends in Kuwait report to them. Taking into consideration these, and other relevant circumstances, the Panel was satisfied that claimants had established the fact of their loss.

Furthermore, in view of the foregoing, the Panel concluded that the personal property losses suffered by an individual, who has established that he or she was resident in Kuwait or Iraq at the time of the invasion, were directly related to Iraq's invasion and occupation of Kuwait.[267]

(iii) Value of Loss

Claimants generally submitted the same documentation in support of the value of their claim as they did to prove the fact of their ownership of the items claimed. Receipts, invoices, bills, and similar documentation constituted the best evidence in support of the value of the losses suffered. However, for the reasons cited above, less than 15 percent of claimants submitted such documentation. When it was provided, in almost every case only partial documentation was submitted for the items claimed, and as such, did not total the amount claimed. In addition, receipts, invoices and bills were provided, in some instances for the original cost of the respective items, and in others for the replacement of the items lost.

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[267] The Panel's conclusions reflect the claim form's instructions to claimants, in view of the fact that claimants are not specifically instructed to describe the circumstances surrounding their losses. Notwithstanding the absence of specific instructions, some 58 percent of claimants submitted documentation -- primarily personal statements and witness statements -- relevant to establishing the causal link between their losses and the invasion.

In addition to the above, a very high percentage of claimants submitted itemized lists, personal statements and witness statements in support of the value of their personal property losses. In a large number of cases, claimants went to considerable lengths to provide detailed information relevant to the valuation of their claim, including the make, model, year of purchase, purchase price, etc. Very few claimants, however, provided all of the information, more often than not providing some combination thereof. An equally large number of claimants provided very few details regarding the items claimed. Less than ten percent of the claimants explained the method of valuation used (i.e., whether the corresponding amounts for the items claimed represented the replacement cost, depreciated cost, or purchase price). Claimants also frequently used different valuation bases and methods for similar items. Efforts made by the Panel to establish a generally applicable valuation convention on the basis of the sample claims reviewed proved unsuccessful, principally because the amounts claimed for similar items often varied considerably. Because of the lack of sufficient detail, the Panel was unable to discern whether these differences reflected differences in the make, model, year of purchase, etc. of the items claimed.

On the basis of the evidence reviewed, the Panel was able to conclude that claimants suffered very significant personal property losses measured in monetary terms -- sometimes representing a lifetime's efforts. However, in view of the immense diversity of the evidence submitted in support of valuation, and given that the nuances of individual claims cannot be considered within the context of a mass claims processing methodology, the Panel was unable to value claimants' losses solely on the basis of the evidence submitted.

4) Valuation

In light of the foregoing, and to ensure consistency in the method used to compensate all claimants, a supplementary means of assessing the value of claimants' losses was developed using a statistical model.[268] The secretariat, with the help of its statisticians and expert advice in the field of mass claims processing, in order to provide the Panel with an objective standard against which to evaluate the amounts claimed, constructed a model to estimate an amount each claimant might reasonably have been expected to claim based on (1) the amounts claimed by similarly situated claimants in the claimant population, and (2) certain individual characteristics of the claimant relevant to predicting that claimant's property accumulation behaviour, and hence, property losses.

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[268] In this regard, the Panel was guided by the experience of courts and other bodies which, increasingly, are using statistical techniques to verify and compensate mass claims. Studies have shown that for the paying party, generally, the level of error that is likely to be associated with the amount of compensation awarded is approximately the same irrespective of whether the amount of compensation is based on numerous individual trials or on the basis of a methodology that uses statistical analysis and sampling to achieve certain "averaging" results. See e.g., Bone, R., "Statistical Adjudications: Rights, Justice, and Utility in a World of Process Scarcity," *46 Vand. L. Rev. 561*; "Justice Improved: Benefits of Aggregate Trials," *44 Stanford L. Rev. 815*.

a) Defining the Model

In order to generate an estimate for each claimant, information from the "CID" and "C4" pages of the claim form were used to define the model, together with the amounts claimed for personal property losses by each claimant, and certain structural variables (e.g., slope and intercept variables) necessary for the model's operation. The overall reliability of the data used in the model was verified through a variety of external sources regarding patterns of personal property accumulation and ownership by persons resident in Iraq and Kuwait, and the socio-economic characteristics of such persons.[269]

The model was designed to account for limitations in the representativeness of the First Instalment claimant population and to adjust for missing data potentially relevant to the accuracy of the amounts generated by the model. It was further designed to reflect, to the extent possible, variations in the general patterns of documentary evidence submitted by the claimants.

The following information for each claimant was entered into the model:

(a) **Amount Claimed** -- The amount claimed by each claimant for personal property losses was entered into the model to serve several purposes, inter alia: (1) to allow for a straight comparison of each claimant's amount claimed with the amounts claimed by other claimants; (2) to calculate a simple average of the amounts claimed in order to assess whether the amount claimed by an individual claimant is presumptively typical in relation to the claimant population; (3) to account for variations in the valuation methods used by claimants when valuing their claims; and (4) to account for differences in the actual and estimated prices of the items underlying each claimant's claim.

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[269] The main sources of external data consulted included the following: *Annual Statistical Abstract 1990/1991*, Central Statistical Office, Ministry of Planning, Kuwait; *Statistical Abstract in 25 Years*, Central Statistical Office, Ministry of Planning, Kuwait; *Family Budget Survey 1986/1987*, Central Statistical Office, Ministry of Planning, Kuwait; *Business Environment and Practice in Kuwait - Final Report*, prepared for PAAC by Arab-Dar Consultants (December 1993); Khalaf, B., *Assessment of the Stock of Kuwaiti Household Assets Prior to the Iraqi Invasion*, Kuwait Institute of Scientific Research, May 1994, submitted to the United Nations Compensation Commission by PAAC; Al-Moosa, AbdulRassool and McLachlan, *Immigrant Labour in Kuwait*, Croom Helm Ltd, Sydney, Australia (1984); Gunatilleke, G. (ed.), *Migration to the Arab World -- Experience of Returning Migrants*, United Nations University Press (1991); The Economist Intelligence Unit (EIU-93/94), *Iraq Country Profile 1993-1994: Annual Survey of Political and Economic Background*. Information submitted by several countries in response to a questionnaire issued by the secretariat regarding the socio-economic characteristics of their respective claimant populations, as well as supplementary material submitted by a number of governments with their claims were used, where necessary.

Inasmuch as the estimates generated by the model largely would be on the basis of the amounts claimed, the Panel verified that the amount of losses stated by claimants reflected generally the amount of property the average Kuwaiti and non-Kuwaiti household in Iraq and Kuwait could be estimated to have owned prior to the invasion.

(b) **Nationality** -- Each claimant's nationality was entered into the model (1) as a proxy for a range of characteristics that generally are recognized as having a bearing upon the amount of personal property owned by an individual and his or her property accumulation behaviour, and (2) to capture the variations in property ownership and accumulation patterns that several studies indicate appear to have been present among the various nationalities resident in Iraq and Kuwait prior to the invasion.

(c) **Family Status** -- A claimant's family status while in Iraq or Kuwait also was considered to be relevant to estimating personal property losses.[270] As discussed above, as a matter of common practice, a significant number of expatriate workers, although married, travelled to Iraq and Kuwait without their families. Those who were present with their families are likely to have owned more personal property, and hence to have lost more. This presumption was confirmed by statistical analysis of the claims data and by data from independent sources.

(d) **Place of Residence** -- The model also included whether claimants were resident in Iraq or Kuwait in order to capture differences in the cost-of-living between the two countries, and variations in the propensity of claimants in the two countries to accumulate property. For example, expatriates residing in Iraq typically did not have their families with them and tended to reside there for shorter periods of time. Historically, the cost of living in Iraq is also lower than that in Kuwait. Hence, on average, expatriates resident in Iraq are likely to have submitted personal property claims for lower amounts than claimants who were resident in Kuwait.

(e) **Age** -- Claimants' ages were captured to account for variations in property accumulation and amount claimed based on a claimant's age. Predictably, claimants who were older, for the most part, claimed for higher amounts than those who were younger.

(f) **Household Furnishings Claim** -- In addition to socio-economic data, the model also included whether the claimant had made a claim for household furnishings. This information was captured to account for claimant-specific variations in duration of stay, professional and economic status, family status and similar claimant-specific information not represented in the model by other variables listed above. Typically, claimants making a household furnishings claim, are likely, to have resided for a longer period in Iraq or Kuwait, to have been accompanied by their families, to have owned their household furnishings, etc.

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[270] Because information regarding claimants' family status was not specifically requested by the "C" claim form, the Panel relied on data from external sources to make assumptions in cases where the necessary information could not be captured from the claim form and attached documentation.

b) Application of the Model

Using the model, the amount claimed by each individual claimant was compared with the amounts claimed by other claimants taking into account their respective personal characteristics and property accumulation indicators. The model thus generated an estimate for each claimant reflecting the individual qualities of the claimant that are likely, on average, to have made him or her more or less susceptible to the amount of personal property losses alleged to have been suffered. Experts consulted by the Panel confirmed that the model's level of performance and the estimates generated thereby conformed to the standards generally accepted in statistical estimation.

The model indicated that approximately 57 percent of the claimants had claimed an amount lower than might reasonably have been expected in light of their personal characteristics and property accumulation indicators in relation to those of other claimants. On the basis of the sample claims reviewed and relevant external data, this would appear to be attributable to several factors, inter alia: (1) the invasion affected each individual claimant differently; (2) significant differences are present in the amount, value and type of property owned by individuals based on a variety of factors relevant to individual property accumulation patterns and behaviour; (3) claimants may not have claimed for all of the losses actually suffered; (4) claimants may have claimed for only a portion of their losses on page "C4" , including the balance in a category "D" claim; and (5) for a variety reasons, including cultural and socio-economic factors, these claimants may have undervalued their claims. Because of the high level of confidence in the accuracy of the amounts provided by the model, and in light of the foregoing factors, the Panel determined that claimants claiming an amount lower than the estimate generated for them by the model, should be awarded the amount claimed.

For the remaining 43 percent of the claimants, the Panel relied upon the estimated amounts generated by the model to calculate the amount of compensation awardable. The Panel used this amount on the grounds that it represents an "average" amount of compensation for each claimant, "conditioned" or reflecting, on the one hand, amounts claimed by all claimants in the population, and, on the other hand, certain of the claimant's characteristics having a bearing on the amount of personal property losses he or she is likely to have suffered.

In light of the large number of personal property claims, the diversity of the claims and the claimant population, the time frame within which the claims must be processed pursuant to the Governing Council's mandate, the limitations of the documentary evidence with respect to a proper valuation of claimants' losses, and the need to ensure equity and fairness to all parties concerned, the Panel is of the opinion that the compensation awarded on the basis of the foregoing methodology (a) is reasonable, in that it reflects the patterns in the amounts claimed by all claimants in the population; (b) is equitable, in that each claimant is not awarded an amount higher than that to which the Panel has established that he or she is entitled; and (c) is as tailored as possible, within the framework of a mass claims processing methodology, to reflect the individual circumstances and characteristics of a claimant.

Based on the considerations and applying the principles described in this section, the Panel has arrived at the recommendations for "C4" personal property losses referred to in Part V and the Annexes, infra.

b. Motor Vehicle Claims

In addition to claims for personal property items (including clothing, personal effects and household furnishings, etc.), claims for motor vehicle-related losses may be submitted on the "C4" page of the claim form. Claims may be made for the total loss or theft of a vehicle, or for the costs of repairs due to damages caused by Iraq's invasion and occupation of Kuwait.

1) Summary of Relevant Facts

There was extensive destruction, theft and damage to motor vehicles during the invasion of Kuwait. It is estimated that there were approximately 800,000 motor vehicles in Kuwait in 1990, of which about 85 percent were private automobiles.[271] Approximately two thirds of the private automobiles -- an estimated 448,000 cars -- were "reported stolen, looted or vandalized."[272] Captured Iraqi orders confirm that there was an organized and concerted effort on the part of the Iraqi forces to pillage the vehicle fleet of Kuwait.[273] In addition, unofficial theft and destruction of automobiles by the Iraqi occupying forces, as well as by elements of the civilian population, is reported to have occurred throughout the period of the occupation.

Private and public automobiles and other vehicles were damaged, destroyed or stolen, or were systematically stripped of parts and accessories. The main area for automobile dealerships, Shuwaikh, is said to have been specifically targeted. In addition, photographs of the desert after the invasion, particularly of the area immediately surrounding the primary north-south highway between Kuwait and Iraq, show tens of thousands of destroyed and abandoned motor vehicles.

The invasion of Kuwait also precipitated a mass exodus of expatriate workers from Kuwait and Iraq, many of whom left without their personal property, including their automobiles. Following the cessation of hostilities, a considerable number of these persons have not returned to either country to repossess their property or to recoup their losses.

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[271] See, Ahtisaari Report, at 12, para. 36. The Panel also consulted reliable secondary source material, and took into consideration factual information submitted by governments and that contained in the claims themselves.

[272] Id.

[273] For example, regarding public vehicles, "all Kuwait City's fire-engines and the Government's stock of ambulances were removed from the country." See, Ahtisaari Report, at 12, para. 36. Similarly, an Iraqi order dated 2 October 1990 indicates that for individuals owning more than one automobile, their second (or additional) automobile(s) should be confiscated to be sold at public auction. Another Iraqi order dated 3 January 1991 refers to the "status of vehicle spoils," information of which was to be relayed to the Iraqi high command. Still another order, dated 5 February 1991, states: "[A]pproval was obtained to receive 20 buses from the vehicle spoils . . . present at the English School and Fajr Al-Sabah School."

Many individuals who had been living and working in Iraq and Kuwait used their motor vehicles to depart the region. Some, such as Pakistani and Indian nationals, used their vehicles to travel back to their countries. Others simply left their vehicles in airport parking lots or at border posts, and departed the region through organized or private means. Still others were forced by Iraqi officials to surrender their vehicles, or sell them at artificially deflated prices, as they passed border checkpoints.

2) Claims in First Instalment

The table below provides the number of motor vehicle claims in the First Instalment, by submitting country and by the type of motor vehicle-related loss claimed. The claims are grouped into those for (i) "total loss," including destroyed or stolen and unrecovered vehicles, and (ii) costs incurred for the repair of vehicles. The First Instalment claims represent a relatively small proportion of the total number of motor vehicle claims filed, or expected to be filed, with the Commission. The number of such claims is assumed to range between 50,000 and 100,000 claims. In addition, a significant number of motor vehicle-related claims may be submitted in claim categories "D", "E"[274] and "F".[275]

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[274] Category "E" claims are claims submitted by corporations and other entities, pursuant to the guidelines provided by the Governing Council in Decision 7.

[275] Category "F" claims are claims submitted by governments and international organizations. See Decision 7.

NUMBER OF "C4" MOTOR VEHICLE CLAIMS IN FIRST INSTALMENT BY COUNTRY			
Country	**Claims**	**Total Loss**	**Repairs**
Australia	35	33	2
Bahrain	2	2	0
Brazil	4	3	1
Denmark	20	17	3
Kenya	1	1	0
Kuwait	41	39	2
F.Y.R. of Macedonia	1	1	0
Malaysia	1	1	0
Pakistan	235	206	29
Poland	19	18	1
South Africa	1	1	0
United Kingdom	61	56	5
United States	80	79	1
F.R.Y. (Serbia & Montenegro)	8	8	0
Total	**509**	**465**	**44**

3) Processing Considerations and Methodology

a) General Considerations

In addition to the general considerations discussed above, several factors were relevant to the methodology and criteria adopted by the Panel for motor vehicle claims, including: (a) applicable Governing Council guidelines; (b) the comments and views of governments in response to legal and factual issues raised by the Executive Secretary in the quarterly Article 16 Reports; and (c) the requirements of the "C4" page of the claim form relevant to motor vehicle claims, and the documentation submitted in response thereto.

(i) Applicable Governing Council Guidelines

There are no specific Governing Council guidelines with respect to evaluating and compensating motor vehicle losses, other than the instructions provided in the claim form and the general evidentiary standard for category "C" claims that the evidence be the "reasonable minimum that is appropriate under the particular circumstances of the case."

(ii) Government Responses to Article 16 Reports

Several governments, including the Government of Iraq, submitted comments in response to the following issue raised by the Executive Secretary in the First Report Pursuant to Article 16 of the Rules:[276]

> Claimants in Category "C" seeking compensation for loss of personal property, including automobiles, who have explained how they valued the property, have used different methods, raising the issue of the appropriate valuation methodology to be applied.

(iii) The Claim Form and Evidentiary Patterns

The "C4" page of the category "C" claim form instructs claimants to "attach appropriate documentary evidence establishing ownership of the property items and explain the method of valuation used." Space is provided on the form for the claimant to specify the make, model and year of the motor vehicle(s), as well as the registration or vehicle identification number(s). Regarding the type of loss suffered, claimants are instructed to indicate "T" for "total loss," "S" for "stolen not recovered," or "R" for "repaired." The claim form provides that the amount of loss claimed can "include cost of repairs, replacement, towing or rental." While the general instructions to claimants state that only losses directly related to Iraq's invasion and occupation of Kuwait are compensable, the "C4" page does not specifically request claimants to explain how their motor vehicle(s) might have been lost, damaged or destroyed.

Based on the sample claims reviewed by the Panel and data compiled by the secretariat regarding the population of motor vehicle claims, the Panel observed that claimants typically provided the make, model and year of the vehicle(s) underlying their claim.[277] A significant number of claimants also provided the registration and/or vehicle identification numbers of their motor vehicles. Most claimants have given an estimate of the value of their motor vehicle(s) at the time of the loss. Of these claimants, however, less than fifty percent indicated the method used to arrive at the value asserted on their claim form.

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[276] Article 16 Report No. 1, at 8, para. 10.

Most claims were accompanied by some form of evidence, including personal or witness statements, photographs of the claimants' motor vehicle(s), motor vehicle registration documents, insurance papers, import certificates verifying the vehicle's lawful importation into Kuwait, driving permits, or receipts, invoices or itemized lists for the repair costs incurred. A significant number of claimants, predominantly those from Kuwait, submitted "drop registration" certificates as proof of both the fact of ownership of the motor vehicles underlying their claim and of the fact of their loss. The "drop registration" is a document that may be obtained from the Kuwait Ministry of the Interior. It purportedly confirms (1) that a particular vehicle was at one time on the road and registered in Kuwait, and (2) that the vehicle is no longer on the road in Kuwait. According to the Kuwaiti authorities, claimants who have obtained a drop registration form are considered by Kuwait's Traffic Department of the Ministry of the Interior to have established that they no longer own the motor vehicle(s) in question, or at least that the vehicle is no longer on the road because it is no longer legally registered in Kuwait. Several other governments have used the same means to attempt to confirm on behalf of their claimants the losses of motor vehicles.

The background reports regarding the extent of property damage in Kuwait, the departure circumstances and patterns of persons who fled Iraq and Kuwait in the aftermath of the invasion, and information provided in connection with other losses being claimed on the "C" claim form, served as additional support for the claims.

b) Methodology

Taking into account the number of motor vehicle claims in the First Instalment, the total number of such claims estimated to be reviewed by the Panel, the characteristics of the claims and of the supporting documentation, and the requirements for compensating such losses, the Panel adopted a methodology for motor vehicle claims in the First Instalment, entailing: (1) the classification of all motor vehicles according to make, model and year; (2) the individualized review of the evidence available in support of the claims; and (3) the valuation of claims found to be eligible for compensation according to a standardized motor vehicle valuation table created for such purposes. The Panel notes that the number of motor vehicle claims in future instalments, and the general evidentiary and other relevant patterns observable in the claims, may warrant a modification of this methodology to facilitate the expedited processing of motor vehicle claims.

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[277] A number of claimants failed to provide details about the model of their motor vehicle, perhaps due to confusion about what information was being requested on the claim form.

c) Relevant Issues and Criteria

The Panel identified and considered three issues relevant to the assessment and disposition of motor vehicle claims in the First Instalment: whether sufficient evidence is present to enable the Panel (a) to determine the fact of the claimants' ownership of the motor vehicle(s) on which the claim is based; (b) to determine if claimants' losses were causally related to invasion and occupation of Kuwait; and (c) to prove the fact of the claimants' loss. In connection with determining the amount of compensation awardable to a claimant, the Panel also examined whether claimants had established the value of their motor vehicle-related loss.

(i) Fact of Ownership

The "C4" page of the claim form requests that claimants "attach appropriate documentary evidence establishing ownership . . . ." Thus, regardless of the type of motor vehicle loss being claimed (i.e., total loss or repair costs), the Panel first considered whether claimants had provided sufficient proof of the fact of ownership of their motor vehicle(s). Several background factors were pertinent to the Panel's deliberations. First, claimants who did not depart Kuwait as a result of the invasion, as well as those who may have returned to Kuwait before they filed their claim forms, are likely to have had better access to documentation in support of the fact of ownership of their motor vehicle(s). Generally, however, it appears that unless such claimants already had the relevant documents in their possession, or were able to recover them in time to submit them with their claims, procuring substitute documentation was a difficult task in light of the general situation in Kuwait following the country's liberation; particularly for many non-Kuwaiti claimants.

The majority of those claimants who may not have returned to Kuwait or Iraq, departed under emergency conditions, and consequently, in most instances, left their vehicles behind without safely securing them or retaining documents that later could be used to substantiate their losses. Such claimants also are unlikely to have had sufficient access to the relevant authorities in Kuwait or Iraq in order to obtain substitute documentation in support of the fact of ownership (or loss) of their motor vehicle(s).

In light of the circumstances, the Panel determined that claimants providing some form of official documentation such as car insurance records, car registration papers, drop-registration papers, police reports, etc., could be considered to have proven the fact of ownership of the motor vehicle(s) to which such documentation pertains. A lesser degree of evidentiary support may be sufficient in certain circumstances. Thus, for example, non-Kuwaiti claimants may be deemed to have established the fact of ownership of their motor vehicle(s) if the claimant has submitted a claim form containing the make or model for each motor vehicle for which a claim has been submitted, as well as the registration number or vehicle identification number for each motor vehicle, and the original cost or value of the motor vehicle(s).

(ii) Fact of Loss and Causation

The Panel also considered whether claimants' motor-vehicle losses were related to the Iraqi invasion and occupation of Kuwait. In this regard, several factors were relevant to the criteria adopted by the Panel.

First, in contrast to the guidance provided on several other pages of the claim form, there is no request that claimants explain or document the factual circumstances regarding the loss of their motor vehicle or the resultant damage. While some claimants have provided an explanation or even documentary evidence, such as a drop registration, addressing the fact of the loss of the vehicle, as well as an explanation of how the loss was related to the invasion, many have not. In fact, those who left vehicles behind are unlikely to know the circumstances under which their car was damaged, destroyed or stolen.

Second, as described above, there was extensive vandalism and looting of motor vehicles. Perhaps even more so than in the case of other personal property items, cars were targeted by the Iraqi forces and by other civilian groups remaining in Kuwait who took advantage of the general breakdown of civil order in the country. Thus, for the majority of claimants, both Kuwaiti and non-Kuwaiti, it may be presumed that the motor vehicle loss was causally linked to the Iraqi invasion and occupation of Kuwait.

Third, for many thousands of claimants, their own motor vehicles were the only means of departing Kuwait or Iraq. These claimants suffered motor vehicle-related losses by virtue of having left their vehicles at border posts (e.g., the Kuwait-Saudi Arabia border, the Kuwait-Iraq border, the Iraq-Jordan border, etc.), in airport parking lots in Saudi Arabia and Jordan, and at other points of departure.

Accordingly, in the case of a claim for "Total Loss" or "Stolen Not Recovered", a claimant's motor vehicle loss may be considered related to the invasion if the vehicle was left in Iraq or Kuwait. Where there is no indication that the claimant used his or her vehicle to depart Iraq or Kuwait, it may be presumed that the vehicle was left in one of those two countries. For claimants who have indicated that they departed Iraq or Kuwait in their own motor vehicle, the claimant's loss may be considered causally linked to the invasion if the motor vehicle was left in a country known to have been a formal or informal point of departure from the region. These countries include Jordan, Saudi Arabia, Turkey, Bahrain, Iran, Syria, Turkey, the United Arab Emirates and Qatar.

In the case of a claim for "Repairs", repair costs incurred in Kuwait or Iraq during the period 2 August 1990 to 31 August 1991 may be presumed to be causally related to Iraq's invasion of Kuwait. This presumption is rebuttable by information contained in the claim file.

For repairs effected after 31 August 1991, special circumstances must be observable from the claim form or attached documentation relating the costs incurred for the repairs to events that took place during, or that arose out of, the invasion and occupation of Kuwait. It must also be apparent from the claim form and attached documentation that the claimant did not return to Iraq or Kuwait before 31 August 1991, or that there are other extenuating circumstances explaining why the motor vehicle was not repaired earlier.

Repair costs incurred by departees after 2 August 1990, for normal "wear and tear" to their motor vehicle while en route to their final destination may also be considered causally related to the invasion.

Claimants found by the Panel to have established the causal relationship of their loss to Iraq's invasion and occupation of Kuwait are entitled to compensation.

d) Valuation

(i) Claims for Total Loss of Motor Vehicle

Generally, claimants filing for the total loss of their motor vehicle were unable to submit substantially material or relevant evidence in support of the value of their loss beyond the information provided in the claim form -- make, model and year of the motor vehicle(s), original purchase price, and the "value" of their motor vehicle(s). Less than 50 percent of the claimants provided any indication of the method used to value their motor vehicle(s). Moreover, as noted above, certain claimants did not provide all of the information requested pertinent to valuing their loss (e.g., some claimants only provided the model and not the make of their motor vehicle(s), and vice versa, while others failed to indicate the model year of the vehicle(s). To the extent that valuation-related evidence was provided, claimants typically submitted invoices, sales contracts or similar records establishing the original purchase price of the motor vehicle(s) underlying their claim. Otherwise, claimants submitted documentation confirming the information given on the claim form relevant to a valuation of the amount claimed, such as a registration certificate indicating the make, model and year of the motor vehicle(s). The Panel also observed that in nearly all cases, the amount claimed was less than the asserted original value.

In light of the wide variation in the amounts claimed for similar automobiles or classes of automobiles, the inconsistency of the valuation-related information provided (make, model and year) by claimants, the lack of uniformity in the purchase prices indicated by claimants for similar automobiles, and the lack of consistency in the documentation submitted, the Panel decided that for automobiles that were destroyed, lost or stolen as a result of the Iraqi invasion, the amount of compensation awardable should be calculated on the basis of an estimation of the fair market value of the automobile(s) as of 1 August 1990. The Panel used 1 August 1990 as a uniform date for valuation because the actual loss or the loss of use of most automobiles took place on or around that date. In this regard, the Panel relied upon a standardized table of motor vehicle values prepared by and submitted to the Commission by PAAC.

The Motor Vehicle Valuation Table ("MVV Table") submitted by PAAC, provides standard market values indexed by make, model and year for motor vehicles in Kuwait for the years 1980 to 1990. The values in the MVV Table are depreciated to reflect the current value of motor vehicles as of August 1990. The values were derived from real market values provided to PAAC by several major lenders and dealers in the Kuwaiti automobile market.[278]

The Panel adopted PAAC's Motor Vehicle Valuation Table (MVV Table) after carefully reviewing the methodology used by PAAC to prepare the table; after considering alternative sources of automobile valuation information, such as the NADA Manual; and after taking into consideration the fact that virtually all of the vehicles for which claims have been submitted in the First Instalment were in Kuwait. The Panel also took into account the fact that comparable information for the few motor vehicle claims in the First Instalment submitted by persons who were resident in Iraq, was not available to the Panel.

For motor vehicle claims for "Total Loss" or "Stolen Not Recovered" in the First Instalment, the Panel determined that the amount of compensation awardable to claimants should be calculated on the basis of a comparison of the amounts claimed by claimants found to have established the fact of ownership with the value indicated for the underlying vehicle in the MVV Table. The compensation awardable to a claimant should in no event exceed the lesser of the amount claimed or the corresponding value for the motor vehicle in the MVV Table.

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[278] Where market data was not available, PAAC used a statistical analysis to extrapolate results from the available data. For those automobiles for which there was no Kuwait-based market data, PAAC's general approach was to derive the value, with an appropriate adjustment, from the National Association of Automobile Dealers (NADA) Used Car Values Manual, which is a standard reference for used car prices in the United States. The NADA values were adjusted by a multiplier that reflected (1) the country from which the automobile was shipped and (2) the demand for the particular model in Kuwait. In the absence of any data from the sources consulted, the value was generated by applying the depreciation rates commonly applied by automobile dealers in Kuwait in determining sales prices for particular types of automobiles.

Finally, the claims in the First Instalment contained several unique motor vehicles, such as a large ocean cruiser, that were evaluated on a claim-by-claim basis, or that were transferred to page "C8" (i.e., individual business losses) if the vehicle (e.g. trucks, cranes, heavy duty vehicles) appeared to have been used in the claimant's business.

(ii) Claims for Repair Costs

Better evidence in the form of receipts and invoices, personal statements, and itemized lists of the costs incurred, was submitted by persons claiming for repair costs. It is entirely probable that claimants will have made the repairs underlying their claim after the liberation of Kuwait. They also may have been aware of the possibility of submitting a claim for compensation for the amounts spent. In general terms, therefore, claimants are likely to have had better access to the necessary evidentiary items to support their claims, and to have been more inclined to retain relevant documentary evidence. At the same time, as discussed previously, Kuwait is not a business culture in which receipts are commonly provided (or kept), particularly when the amounts spent are small. The Panel also took into account the Governing Council's guideline that a lesser degree of evidence may be sufficient for claims for lower amounts, as well as the patterns of evidence and of amounts claimed observable in the claims.

The Panel accordingly adopted the following criteria for determining the amount of compensation payable for repair cost claims in the First Instalment:

(1) claims for repair costs up to US$ 500, whether incurred within or outside of Kuwait, require only proof of the fact of ownership of the motor vehicle;

(2) claims for repair costs above US$ 500, but less than US$ 2,500, which were incurred within or outside of Kuwait must be supported by at least a claimant statement itemizing the costs incurred, and explaining the factual circumstances giving rise to the claimant's losses. In the absence of the foregoing, the claimant may be awarded an amount of US$ 500;

(3) claims for repair costs above US$ 2,500 which were incurred within or outside of Kuwait must be documented by receipts, invoices, bills of sale, or other documentation from the vendor totalling the full amount claimed. An explanation by the claimant regarding his or her inability to provide the necessary documentation may be accepted as alternative support for the amount claimed. In the absence of an appropriate explanation, however, the claimant may be compensated the amount supported by the documentary evidence submitted plus the lesser of either US$ 500 or the difference between the amount claimed and the amount supported by the

documentary evidence. The Panel further finds that a claimant may not be compensated an amount in excess of the amount indicated on his or her claim form. However, if the amount claimed for repair costs is higher than the value of the motor vehicle according to the MVV Table or the default value, the Panel considers the vehicle to be a "total loss", and as such, the claimant may be awarded the lesser of the two amounts.

Based on the foregoing considerations and applying the principles described above, the Panel reaches the recommendations for "C4" motor vehicle losses, as reflected in the total amounts recommended for personal property claims on page "C4". The Panel's compensation recommendations are referred to in Part V and the Annexes, infra.

5. Loss Type "C5": Loss of Bank Accounts, Stocks and Other Securities

The "C5" loss type permits claimants to submit claims for the "Loss of Bank Accounts, Stocks and Other Securities" as a result of Iraq's invasion and occupation of Kuwait. This section of the Report discusses the Panel's factual, legal and processing considerations in developing its methodology and criteria for reviewing bank account, stocks and securities claims. It also sets out the Panel's recommendations for such claims in the First Instalment.

a. Summary of Relevant Facts

1) Bank Operations During the Occupation

As elaborated above, Iraqi troops entered Kuwait in the early morning of Thursday, 2 August 1990, in the process precipitating an urgent mass exodus of Kuwaiti nationals, as well as of expatriates who were living in Kuwait and Iraq. In light of the urgent circumstances, coupled with the fact that the Kuwaiti weekend had commenced, many of the departees were unable to withdraw funds from their bank accounts prior to departure.

On Monday, 6 August 1990, reports indicate that banks in Kuwait did not open for business, and automatic bank teller machines were inoperational. Thereafter, for virtually the entire duration of the occupation, most of the banks in Kuwait remained closed. Those banks that managed to continue to function did so irregularly. In many countries, the assets of the foreign branches of Kuwaiti banks were frozen, or these branches had no access to bank records for customers whose funds were on deposit in Kuwait. For example, during the entire occupation period, several foreign branch offices of Kuwaiti banks, were unable to allow withdrawals by depositors based on their deposit accounts in Kuwait.

Less precise information is available concerning the status of banking operations in Iraq during the course of the invasion and occupation. According to some claimant statements, it appears that Iraqi banks continued to operate until immediately prior to the commencement of the Allied Coalition Armed Forces offensive in January 1991. Their foreign branches, however, were made subject to the United Nations' embargo and asset freeze, which took effect on 6 August 1990. Some claimants who were in Iraq at the time of the occupation of Kuwait assert that the Iraqi Government refused to permit the transfers of funds in their accounts in Iraqi banks. In other cases, claimants assert that Iraqi banks failed to respond to requests for withdrawals.

2) Bank Operations Post Occupation

Following the withdrawal of Iraqi troops from Kuwait, banks operating in Kuwait resumed activities effective as of 24 March 1991.[279] The first stage of the resumption of activities entailed the introduction of a set of temporary controls for withdrawals. Account holders initially were permitted to withdraw each month up to KD 4,000, or its equivalent in foreign currencies within the period extending from 24 March 1991 to 30 June 1991.[280] The maximum monthly withdrawal was raised to KD 6,000 effective as of 1 July 1991. Interest on the bank accounts was calculated and forced withdrawals made during the occupation were fully restored.[281]

Effective 3 August 1991, the withdrawal restrictions were lifted altogether, and holders of bank accounts, both Kuwaiti and non-Kuwaiti, were able to withdraw their funds freely, on the same principles in place before the invasion. For foreign account holders who had not returned to Kuwait, the Government of Kuwait has informed the Commission that Kuwaiti banks have adopted measures, under the leadership of the Central Bank of Kuwait, to make funds in bank accounts freely available to the beneficiaries of those accounts.

The Kuwaiti Government has stated that "account holders who are not resident in Kuwait . . . can effect withdrawals from their accounts in the following way:"[282]

> ° an account holder completes a withdrawal request at the correspondent bank, stating the available account details, the name of the bank and the branch concerned;
>
> ° the account holder signs the request form to be verified by the correspondent bank;
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> ° the correspondent bank transmits the request to the concerned Kuwaiti bank; and
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> ° the Kuwaiti bank transfers the funds as requested by the account holder as

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[279] Letter from PAAC, dated 15 October 1991, together with attachment entitled "Actions Taken in Kuwait Regarding Customers Accounts with Kuwaiti Banks" (the "Bank Procedures Letter").

[280] Id.

[281] Id.

[282] See Bank Procedures Letter.

soon as the request can be processed.

By letter dated 25 October 1991, the secretariat informed over 80 governments, believed to have claimants eligible to submit bank account claims, of the procedures instituted by the Central Bank of Kuwait to make accounts available to foreign nationals formerly resident in Kuwait.

In a letter sent to the secretariat dated 19 April 1993, the Deputy Chief of the Kuwaiti Banks Committee identified alternative procedures that may be followed by account holders for withdrawing their funds. According to these procedures, account holders should:

(i) write a letter to the bank signed by the customer/account holder (i.e. the claimant);

(ii) provide a resident inside Kuwait with a Power of Attorney authenticated by an Embassy of Kuwait abroad which states clearly that the representative may withdraw the account from the bank;

(iii) take necessary measures in coordination with a local correspondent bank.

The letter further states that "[i]n all circumstances, any proposal by the customer should meet all the information and documentation relevant to the accounts."

Although it would seem that these instructions are different from those outlined in the Bank Procedures Letter, as a practical matter, it appears that claimants have been able to access their funds using either set of procedures or a combination thereof. To date, the secretariat has received no information from any government, or through independent means, indicating that foreign account holders have not been able to gain access to their bank accounts in Kuwait.

In contrast, Iraqi banks and their branch offices continue to be subject to the United Nations' sanctions and economic embargo enacted pursuant to resolution 661 (1990),[283] the national sanctions implemented by certain countries pursuant thereto, and to provisions of various Iraqi domestic laws. As such, access to accounts in Iraqi banks remains difficult, if not impossible, for persons no longer resident in Iraq.

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[283] Security Council resolution 661 (S/Res/661 (1990)).

b. Claims in the First Instalment

Bank account claims in the First Instalment were grouped by the secretariat according to whether the claimant's account had been located in an Iraqi or a Kuwaiti bank. The grouping was accomplished on the basis of information provided by the claimant on his or her claim form. Claims for "stocks and other securities" were treated separately.

The tables set forth below list the total number of category "C5" claims by country in the First Instalment with bank accounts in Kuwait and Iraq, respectively:

KUWAITI BANK ACCOUNT CLAIMS	
Pakistan	351
Australia	8
United Kingdom	7
Denmark	5
United States	4
Poland	1
TOTAL	**376**

IRAQI BANK ACCOUNT CLAIMS	
Poland	3
United Kingdom	1
Nepal	1

It is estimated that the total number of category "C5" claims could range between 10,000 and 20,000, with most being put forward for the loss of amounts on deposit with banks in Kuwait.

c. Framework for Recommendations

1) Applicable Governing Council Guidelines

The standard of evidence for lost bank account claims found in Article 35 of the Rules is derived from the general evidentiary standard for category "C" claims that the evidence and documentation provided in support of such claims should be the "reasonable minimum that is appropriate under the particular circumstances of the case."

2) Government Submissions in Response to Article 16 Report

The First Report by the Executive Secretary Pursuant to Article 16 of the Rules refers to the following issue:

> A number of claims in Category "C" are for the balances of bank accounts in Iraq or Kuwait, raising the issue of the conditions that a claimant must have complied with in attempting to obtain such balances of bank accounts in order for these claims to be compensable.

In response to this and other issues relating to the loss of bank accounts in Kuwait or Iraq, a number of governments, including the Government of Iraq, have submitted comments that have been considered carefully by the Panel.

3) Claim Form

The category "C" claim form requests that claimants "attach appropriate evidence of ownership such as a photocopy of a bank passbook or balance statement and document any attempts to withdraw your money." It also asks the claimant to provide the "name of the account holder", the "bank name", the "type of account", the "bank address", the "account number", the "date on which [the claimant] attempted to withdraw [his or her] money" and the currency and amount alleged to be on deposit.

d. Processing Considerations and Methodology

1) Bank Accounts in Kuwait

The Panel finds most compelling the procedures established by the Central Bank of Kuwait to enable foreign depositors not present in Kuwait to withdraw their funds from Kuwaiti banks. The Panel also notes the Kuwaiti Government's indication that the Central Bank of Kuwait is available to assist account holders in obtaining their funds. Materials analyzed in the course of reviewing the First Instalment of claims revealed that, for at least one of the most affected labour- sending countries -- Pakistan -- most, if not all, of the claims for Kuwaiti bank accounts may have been resolved by the claimants themselves, by availing of the procedures implemented by the Central Bank.[284]

On the basis of the information presently available, the Panel is satisfied that the procedures put in place by the Central Bank provide claimants with full and free access to amounts they may have on deposit with Kuwaiti banks, regardless of their nationalities or places of residence. Therefore, in light of these procedures, and in recognition of the express commitment for cooperation and assistance made by the Central Bank to ensure claimants' access to their bank accounts in Kuwait, the Panel finds that the claims put forward in category "C5" for such accounts are not compensable. However, in order to facilitate claimants' access to their funds, the Panel directs that the following actions should be taken upon the issuance of the Governing Council's Decision on the First Instalment of category "C" claims:

- The secretariat should write to all claimant Governments and provide them with detailed information as to the procedures in place to permit the withdrawal of the proceeds of bank accounts in Kuwait;

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[284] On 25 October 1991, the secretariat informed the Government of Pakistan of the procedures instituted by the Central Bank of Kuwait. By letter dated 23 December 1992, the Government of Pakistan advised the secretariat of 332 Pakistani claimants in Pakistan's first consolidated claim (PK/00024/01C) who had filed a claim for funds in a Kuwaiti bank account. In response to this letter, the secretariat informed the Government of Pakistan that it had checked the claims identified by the Government of Pakistan against a compilation of claimants produced by the secretariat, and that it had forwarded these claims, as well as others identified by the secretariat, to the Government of Kuwait, for delivery to the relevant Kuwaiti banks. In a letter dated 26 April 1993, the Government of Kuwait forwarded to the secretariat the responses of several Kuwaiti banks regarding the Pakistani bank account claims. The banks' responses indicated that several of the claimants had already withdrawn their funds during the course of 1992 (apparently, by following the procedures instituted by the Central Bank of Kuwait), or that the banks needed more specific account information from the claimants in order to release the funds.

- The secretariat should provide each claimant Government with a list of its claimants who have claims for bank account losses in Kuwait;
- Claimant Governments should be advised by the secretariat to make the details of the Kuwaiti banks' withdrawal procedures available to their claimants;
- The secretariat should forward to the Central Bank of Kuwait through the Kuwaiti Government, lists of claimants with bank account claims pending against specific Kuwaiti banks.

The Panel notes, however, that to the extent that the procedures referenced above do not resolve all requests by claimants for the proceeds of bank accounts in Kuwait, the Panel reserves the right to recommend other forms of recourse in future instalments.[285]

2) Bank Accounts in Iraq

In connection with bank account claims involving Iraqi banks, the Panel notes at the outset that only five such claims were presented for consideration in this instalment. One of these claims was brought by a claimant who was present in Iraq on 2 August 1990. The other four have been submitted by claimants who were outside of Iraq on that date.

In light of the relatively small number of claims, and the limited factual circumstances presented thereby, the Panel reviewed and resolved each claim on its own merits. Of principal relevance to the Panel's findings with respect to these claims were the documentation submitted by the claimants in support of their claims, the specific factual circumstances underlying the claims, the limited availability of information regarding bank operations in Iraq after 2 August 1990, and, relevant general principles adopted in international banking practice. In view of the foregoing, the Panel also notes that the claims in this instalment did not lend themselves to the establishing of general criteria that could be applied to resolve large numbers of claims based on bank accounts in Iraq.

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[285] In this regard, the Panel is likely to consider other relevant issues related to bank account claims. For example, in many instances, bank accounts by their very nature could be considered to be pre-invasion obligations of Iraq, within the terms of paragraph 16 of resolution 687, and may therefore be outside of the Commission's jurisdiction. Additionally, assuming that a claimant can prove that his or her Kuwaiti bank account is not a pre-war debt, he or she may still have to demonstrate that a demand for the proceeds of such an account was made and has been denied by a Kuwaiti bank, and that such denial is directly related to Iraq's invasion and occupation. Such a showing of a demand, on the other hand, might not be required where, for instance, a Kuwaiti bank's deposit records were destroyed or looted during the invasion and occupation and foreign customers were denied access to their funds as a consequence.

As may be the case with respect to Kuwaiti bank claims in future instalments, the Panel notes that it is entirely possible that the disposition of Iraqi bank claims in those instalments will entail complex issues of fact and law. Such issues may include whether claims relating to Iraqi bank accounts constitute pre-invasion obligations of Iraq under the terms of resolution 687; whether, and under what circumstances, claimants have or should have made a sufficient demand for their funds; and whether claimants' failure to gain access to their funds was due to reasons other than the economic embargo and sanctions imposed against Iraq. Furthermore, such claims are likely to require this Panel to inquire into the scope and applicability of Iraqi Law No. 57 of 16 September 1990. These are issues that have been raised in the Eighth Report of the Executive Secretary pursuant to Article 16 of the Rules, and the disposition of which may be relevant to the deliberations of this Panel.

Based on its review of the claims, the Panel arrives at the recommendations for "C5" bank account claims involving Iraqi bank accounts as listed in Part V and the Annexes, infra.

3) Claims for Stocks and Other Securities

The table set forth below lists the total number of category "C5" claims of claimants in the First Instalment with claims for stocks and other securities:

STOCKS AND OTHER SECURITIES	
Pakistan	7
United States	1

The limited number of securities claims in the First Instalment, their diversity and the absence of any specific Governing Council Decisions affecting such claims led the Panel to consider possible standards for compensability by evaluating each of these claims individually.

For the few claims that were properly made for securities losses, sufficient documentary evidence of the claimant's ownership and the value of the securities was produced. In such instances, the Panel considered the claimants' personal statements sufficient to demonstrate the cause of the loss of the securities. The Panel found that, subject to proof of ownership and value, the loss of bearer instruments constitutes compensable securities losses. In line with this conclusion, the Panel has recommended an award of compensation for several "C5" claims for stocks and other securities losses, as referred to in Part V of this Report and the Annexes, infra.

6. Loss Type "C6": Loss of Income, Unpaid Salaries or Support

Pursuant to Decision 1, claims may be made for lost wages or salary, support, and other employment-related losses. Decision 8 enables claimants to submit a claim for MPA resulting from the deprivation of all of the claimant's economic resources such as to threaten seriously the claimant's survival and that of his or her spouse, children or parents, in cases where assistance from the claimant's Government or other sources has not been provided. These employment-related losses may be submitted on page "C6" of the claim form.

a. Summary of Relevant Facts

Many of the Panel's factual considerations pertinent to employment-related claims have been discussed previously in connection with "C1" departure and relocation-related losses and "C4" personal property losses. Additional facts relevant to this loss type are described in the section on "C8" individual business losses. The Panel also considered factual information regarding the patterns of employment in Iraq and Kuwait prior to the invasion, including information about principal occupations and occupational levels, wage and salary levels, benefits and allowances. Additionally, the Panel took into account facts regarding the impact of the invasion and occupation of Kuwait on employment-related activity, and the experiences of employees following the withdrawal of Iraqi troops.

The factual considerations and other background information taken into account by the Panel are summarized below. Additional factual details are set forth in the referenced materials,[286] as well as in the context of the discussions regarding the Panel's methodology and criteria for employment-related claims.

1) Background

a) Kuwait

Prior to the invasion, studies indicate that the foreign labour force in Kuwait reflected a wide variety of nationalities, cultures, and educational and professional levels. Expatriate workers provided over 50 percent of the country's labour requirements and were employed in almost all sectors of the Kuwaiti economy. The largest numbers of foreign workers were from Bangladesh, Egypt, India, Iran, Iraq, Jordan (including Palestinians), Lebanon, Pakistan, Sri Lanka, Syria and Yemen.

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[286] In addition to the materials referenced in connection with the Panel's factual considerations regarding departure and relocation losses, personal property losses and individual business losses, the Panel consulted the following sources, inter alia: *Labour Law in the Middle East*, Ziskind, David. Litlaw Foundation, Los Angeles, California (1990); Al-Moosa, Abdul Rasool and Mclachlan, *Immigrant Labour in Kuwait*, Croom Helm Ltd., Sydney, Australia (1984); International Labour Office (ILO Dec. 1990), *The Economic Impact of the Gulf Crisis on the Indian Economy with Special Reference to Kerala and Measures for Re-Absorption of Returning Migrants*, ILO-ARTEP (Asian Regional Team for Employment Promotion) - UNDP project (RAS/88/029).

Real wages and salaries in Kuwait were among the highest in the world. Reports indicate that "duality" (i.e., different wage levels for similar occupations with similar job requirements) of wages and associated benefits was a common phenomenon in the wage structure of the Kuwaiti labour market. This duality was most apparent between the following categories: the public and private sectors, Kuwaiti and non-Kuwaiti nationals, and technical and office-based jobs. Thus, in addition to better wages, government employees, regardless of nationality, typically enjoyed better working conditions and privileges, particularly in comparison to employees in industry and construction. Comparative wage statistics for employment in the public sector (e.g., government civil jobs and public establishments), however, show significant differential earnings between Kuwaiti and non-Kuwaiti employees. Reportedly, some 50 percent of the local Kuwaiti labour force was employed in the public sector where they held executive-level positions, and enjoyed higher salaries, as well as a more comprehensive system of benefits than expatriate employees. This distinction extended also to the private sector employment of Kuwaitis and non-Kuwaitis. Several commentators have further noted that the terms and conditions of employment in Kuwait differed significantly according to nationality, profession, length of stay and economic sector.

Studies indicate that, for a variety of reasons not relevant to the present discussion, distinct patterns can be observed regarding the level and type of occupations held by nationals from different countries, and regarding the sector of the economy in which they were employed. For example, according to one detailed study of the labour force in Kuwait, Jordanians and Palestinians were engaged mainly in technical, production and transportation, and clerical jobs. Egyptians tended to occupy professional, technical, clerical and agricultural jobs, and were predominant in the public sector in medical, teaching, engineering, secretarial and clerical jobs. Unlike Lebanese and Syrians, they generally did not occupy executive, management and sales positions. Indians were predominant in medical, laboratory, nursing, electronic and secretarial jobs, while the Pakistani labour force was predominant in production and transportation, and technical and scientific jobs. Other Asian workers (mainly Bangladeshis, Filipinos and Sri Lankans) were found principally in two occupations, services (including domestic service), and production and transportation. Finally, persons from Western and other industrialized countries typically occupied positions in the scientific, technical and financial sectors at relatively high levels of the professional hierarchy.

b) Iraq

Whereas by the middle of 1990 there were more than 1.5 million foreign workers in Iraq, they represented less than 10 percent of the labour force, and were mainly from Egypt, Jordan, Pakistan, Syria, Sudan and Eastern Europe. Given the structure of the Iraqi economy, expatriate workers tended to occupy positions only in the construction, manufacturing and production sectors. Nationals from industrialized countries typically occupied supervisory and technical positions, whereas those from developing countries predominantly were manual labourers, drivers, site foremen, etc.

2) Terms and Conditions of Employment

a) Low-Income Occupations

Studies indicate that, in Kuwait, generally, persons in low-income occupations held positions as domestic servants, manual labourers, drivers, bellhops, and similar positions requiring low levels of skill or technical knowledge. The typical low-income wage earner came from Asian countries such as India, Pakistan and the Philippines; as well as from Arab countries such as Egypt, Jordan and Syria. For the most part, workers in this category did not have written employment contracts. Reportedly, their monthly earnings averaged less than US$ 700. The most common benefits and allowances for workers in low-income occupations were educational allowances for children, and subsidized or free lodging.

Unskilled expatriate workers in Iraq received, on average, a monthly salary of US$ 750. Workers in this category included persons working as house labourers, drivers, farmers and small industry labourers. From the claims themselves it appears that typical benefits for low-income workers included health insurance, free or subsidized food and housing, and home leave. The composition of nationalities in this category was determined by "state controlled" recruitment policies. Consequently, more than half of the agricultural sector was dominated by Egyptians, Moroccans and Palestinians. Indians, Pakistanis and Sudanese were recruited in large numbers for construction, manual labour, and small scale industry projects. Several reports note that the extent to which formal contracts of employment were used depended on the nationality of the worker, his or her occupation, and the industry in which he or she was employed.

b) Middle-Income Occupations

Several studies note that middle-income occupations in Kuwait generally included carpenters, electricians, plumbers, foremen, clerks, unskilled office workers, government labourers, cooks, tailors, nurses, sales persons, secondary school teachers and computer operators. Persons in these jobs usually attracted a salary of US$ 750 to 3,500 per month. The predominant nationalities in this category were Egyptians and Palestinians; Indians and Pakistanis ranked next but in far fewer numbers. The numbers of Europeans, Americans and other Westerners were minimal. The skills of this category of the labour force were generally more in demand and, concomitantly, contracts typically included provisions for renewal. Common employment-related benefits and allowances included education subsidies, vacation entitlements, paid airline tickets, as well as periodic salary increases based on output.

In Iraq, persons belonging to the middle-income group earned a monthly salary of between US$ 700 and US$ 3,000. The majority of expatriate workers in this group were semi-skilled or skilled workers and held jobs as teachers, service-oriented personnel, electricians, and machine operators in cement, sugar, textile, and petroleum production facilities. In addition to basic health coverage, housing allowances, and food subsidies, occasionally workers in this category also benefitted from profit-sharing plans sponsored by their employers. The composition of expatriate workers in this group reflected highly skilled and skilled nationals from Bangladesh, Egypt, India, Morocco, Pakistan and Palestine. The more highly compensated workers in this income group consisted of skilled Westerners and Iraqi nationals, as well as nationals of Eastern European countries.

c) High-Income Occupations

In both Kuwait and Iraq, persons in high-income occupations were highly skilled professionals, reportedly with a monthly salary in excess of US$ 3,500 in Kuwait and US$ 3,000 in Iraq. They included doctors, scientists, university professors, nurses, computer technicians, lawyers, finance specialists, accountants and oil field experts. Studies indicate that, in Kuwait, nationals from Arab countries were predominant in this category, with Egyptians and Palestinians present in large numbers. Very few Asians were recruited to fill these positions prior to the invasion. The vast majority of Europeans and Americans who were working in Iraq and Kuwait were to be found in this category, most being highly skilled professionals or technical workers. The average stay for workers was two to five years. However, a fair number of Americans, Europeans and Palestinians stayed for longer periods. These professionals received substantial salaries, as well as comprehensive benefits. Typically employment contracts -- which were provided to almost all employees, regardless of nationality -- included provision for subsidized food, rent subsidies, supplementary health benefits, education benefits for dependents, family allowances and other similar perquisites.

3) Impact of the Invasion

The Iraqi invasion and occupation of Kuwait had a devastating effect on economic life in Kuwait. As noted elsewhere in this Report, businesses and other commercial and financial establishments ceased to operate, as did most public sector offices and enterprises. Hundreds of thousands of persons fled these countries without their personal belongings or assets, and without the security or prospects of continued employment in their home countries or elsewhere. For many, obtaining substitute employment often took several months.

On 3 August 1990, in view of the conditions in Kuwait, the Kuwaiti Government (based in Saudi Arabia) issued a decree ordering that "[A]ll the civilian Employees of the Government of the State of Kuwait irrespective of their nationalities including those staying in Kuwait or abroad must refrain from cooperating with the Iraqi occupation authorities in any manner whatsoever." However, civilian employees remaining in Kuwait "who are engaged in works vital for human life and health and the provision of the essential needs related to food, water, electricity and communication" were exempted from this general prohibition.

In that same decree the Government stated that "The Government of the State of Kuwait shall abide by its obligations towards the rights of the civilian employees due to them until 2/8/1990 in accordance with the provisions of the laws, regulations and contracts applicable in that respect."

Subsequently, in January 1991, by Emir Decree, the employment of all government employees other than Kuwaiti and GCC nationals, and that of persons working for the Ministries of Electricity and Health, was terminated, effective 2 August 1990. Following the withdrawal of Iraqi troops from Kuwait, all Kuwaiti Government employees were compensated their total monthly salaries for the seven months of the occupation, as well as for the three months following Kuwait's liberation. Ninety percent of Kuwaiti nationals employed in the private sector were paid their salaries up to a maximum monthly salary of KD 1,000 for the seven-month period of the invasion, if the employee had been registered with the Public Institution for Social Security ("PIFSS"). Self-employed Kuwaiti nationals who were registered with PIFSS also received payments from PIFSS depending on the level of income withholding they had selected.[287] The Government's payment and relief programmes for Kuwaiti nationals included a variety of other measures and benefits, to alleviate the consequences of the Iraqi invasion and occupation.[288]

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[287] All self-employed Kuwaitis must register with PIFSS and, when doing so, must select a level of withholding depending on the expected level of earnings and the amount of pension they ultimately want to receive.

[288] In view of these payments, the Government of Kuwait has indicated that salary and wage claims will not be submitted by Kuwaiti individuals, except in a few exceptional cases. The Government, however, plans to bring a claim to seek reimbursement for the payments it has made.

According to the Kuwaiti Government, the Government compensated all non-terminated employees from countries of the GCC in the same manner as Kuwaiti employees, and retroactively paid all salaries for ten months.

Non-Kuwaiti terminated employees were eligible to receive their end-of-service benefits, entitling each employee to a payment for the sum of one month's salary for each year of employment, to be distributed upon request in person, by proxy, or through any Kuwaiti Embassy abroad; and any wages and salaries together with associated benefits accrued under their contracts as of 2 August 1990. The Kuwaiti Government has reported that it has paid over 57,000 non-Kuwaiti employees who did not return to Kuwait for the purposes of employment their end-of-service indemnities. Those who have returned for employment purposes, whether with their previous employer or a new employer, have not been paid their indemnity. Such payments will be made, subject to set-off, once the employee leaves Kuwait for good. Persons attempting to recover their pre-invasion salaries and associated allowances from private sector employers have been less successful, particularly those who held low-income jobs.

b. Claims in First Instalment

The following table provides a listing of "C6" employment-related claims in the First Instalment, broken down by country and loss element claimed.

NUMBER OF "C6" CLAIMS IN FIRST INSTALMENT BY COUNTRY

Country	No. of Claimants	Salary & Wages	Support	Other	MPA
Australia	43	42	0	29	1
Bahrain	3	3	0	1	0
Bolivia	1	1	1	1	1
Brazil	6	6	0	0	0
Denmark	20	20	0	10	0
France	1	1	0	0	0
Kenya	1	1	0	0	0
Malaysia	1	1	1	1	0
F.Y.R. of Macedonia	3	3	0	2	0
Nepal	2	2	0	0	0
Pakistan	806	728	0	339	35
Poland	29	28	1	11	0
South Africa	2	2	0	1	0
United Kingdom	90	83	1	43	7
United States	163	159	1	78	7
F.R.Y. (Serbia &Montenegro)	13	12	0	8	1
TOTAL	1184	1092	5	524	52

c. Processing Considerations and Methodology

1) General Considerations

a) Applicable Governing Council Guidelines and Standards

Regarding claims for lost salary or wages, lost support and other employment-related losses not including claims for MPA, the Governing Council's guidelines and standards are set forth generally in the claim form, Decision 1 and the Rules.

The Governing Council has provided specific guidance regarding the standards of compensation for employment-related MPA claims. To be eligible for compensation such claims must have resulted "from the deprivation of all of the claimant's economic resources such as to threaten seriously [the claimant's] survival and that of the [claimant's] spouse, children or parents, in cases where assistance from [the claimant's] Government or other sources has not been provided." Pursuant to Decision 8, eligible claimants may be awarded an amount not to exceed US$ 2,500 per claimant or US$ 5,000 per family. These amounts are subject to the cumulative ceilings applicable to compensation payments for MPA claims.

b) Responses to Article 16 Reports

In response to the following issue raised by the Executive Secretary in the First Report Issued Pursuant to Article 16 of the Rules, the governments of several countries, including the Government of Iraq, submitted comments which were carefully considered by the Panel:[289]

> Many claims in Category "C" are for loss of income or salaries in connection with employment that the claimants could no longer perform as a result of Iraq's invasion of Kuwait. These claims raise the issues of whether losses are compensable for: (i) salary payments for work performed but not yet paid; (ii) salary payments for the remaining period of time under an employment contract; (iii) salary payments until the claimant finds new employment; (iv) salary payments until the claimant could have found new employment; (v) other payments and benefits under an employment contract. Employment contracts at issue in these claims include contracts with state and private parties from Iraq and Kuwait, as well as contracts with State and private parties from countries other than Iraq or Kuwait. A related issue is

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[289] Article 16 Report No. 1, para. 11.

> whether compensation, if any, should vary pursuant to the nature (seasonal or otherwise) of the work or services performed by the claimants.

Governments also responded to the following issue raised in the Third Report Issued Pursuant to Article 16:[290]

> Several "C" claimants have submitted claims for losing their jobs in connection with an Iraqi bank branch located in London that was put into liquidation during the period of the invasion. The issue raised is whether such losses incurred by claimants can be considered as losses resulting directly from Iraq's invasion and occupation of Kuwait.

c) The Claim Form and Claim Characteristics

On the "C6" page of the claim form, claimants are requested to provide certain basic employment-related information relevant to verifying the fact of a claimant's employment and the value of his or her employment-related losses.[291] The nature of the information requested, claimants' responses thereto, and the manner in which claimants prepared their claims were fundamental to the Panel's methodology and criteria for claims in this category.

(i) Pre-Invasion Employment Information

In connection with a claimant's employment history prior to 2 August 1990, claimants are requested to indicate whether they had an employment contract, the name of their employer or of the company they worked for, their employee identification number, the address and telephone number of their former employer, and the length of time they were employed prior to 2 August 1990. Almost all claimants in the First Instalment provided full or partial responses to the information requested.

Claimants also are requested to state their monthly or annual salary prior to the invasion. Almost all claimants completed this field.[292] However, reflecting employment practices in Iraq and Kuwait, a significant number indicated their pre-invasion "income" level (i.e., their basic wage plus allowances and benefits), rather than just the salary or wage component of their periodic remuneration.[293] Claimants who disaggregated the salary or wage component of their remuneration, typically claimed for their benefits and allowances separately in the field for "Other" employment-related losses, or in the field for "Support" claims. Unless claimants had provided a specific breakdown of the elements comprising their claim in a statement, or the information could be ascertained from the documentation submitted in support of the claim, generally, the Panel was unable to determine which components of a claimant's remuneration were reflected in the pre-invasion monthly or annual salary field.

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[290] Report No. 3, para 12.

[291] Other pages of the claim form (e.g., the "CID" page) also request information relevant in this regard.

[292] Less than one percent of claimants left this field blank, and the Panel was unable to ascertain their income from the attached documentation, to the extent that relevant documentation had been provided. A review of each of these claims, however, revealed that the claimant is a low income worker, and is unlikely to have understood or been able to comply with the claim form's instructions without considerable assistance. In addition, these claimants may not have received a monthly wage or salary, but rather may have received a one-time lump-sum payment from their employer

(ii) Type of Loss and Amount

Fields are provided to enable claimants to indicate the amount and currency of their losses for wages and salary, support, and other employment-related losses not including MPA. Almost all claimants indicated an amount in the fields relevant to their losses. A separate field is provided for claimants to indicate that they are making an MPA claim.

(a) Wages or Salary

The "C6" page of the claim form does not enable claimants to indicate the grounds upon which their claim is based or the elements underlying their wages or salary loss claim. Claimants, however, are requested to attach a statement describing their damages and appropriate evidence demonstrating their entitlement to recovery. From the statements attached to the sample claims reviewed, the Panel observed very little consistency among the claims. Many claimants have claimed salary or income losses representing the remainder of their employment contract. Others have claimed for a longer period on the grounds that their contracts were of an indeterminate term; in some cases, for periods of more than two or three years. Still others submitted claims for income lost until they were able to find new employment or were re-employed in their old job;

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at the end of their contract terms. The claimants also may have received part of their remuneration in the form of free or subsidized food and accommodation. As such, it is probable that these claimants were unable to calculate properly their monthly or annual salary or wage.

[293] As noted above, the periodic remuneration of persons in high and middle-income occupations in Kuwait and Iraq typically consisted of several components. These may have included a basic wage or salary, as well as items such as children's education allowances, housing allowances or subsidies, automobile allowance, supplementary medical benefits, vacation benefits, and pension plan contributions. For persons in low income occupations and those in certain categories of low-middle income occupations basic wage supplements most often included overtime pay, shift or hazardous duty pay, and occasionally, airline tickets and vacation pay. The periodic remuneration received by claimants working in Kuwait appears not to have included a pro rata amount representing the end-of-service indemnity payment which most public sector employees were entitled to as a matter of contract, and to which employees covered by the Kuwaiti Private Sector Labour Law were entitled to as a matter of law. Nor does it appear to have included certain other one-time lump-sum payments, such as bonuses or cost-of-living adjustments

and in several instances, for the difference in remuneration level between their old and new jobs. In addition to, or in some cases exclusive of, the amounts claimed in connection with one or more of the above situations, claimants have claimed for amounts payable as a matter of law in lieu of notice. The amounts claimed also appear to reflect a wide range of employment benefits and allowances, as well as, in a significant number of cases, remuneration arrearages (i.e., wages and allowances due for work performed).

(b) Support

On the basis of the sample claims reviewed, it appears that many claimants used the "Support" field on the "C6" page to submit claims that should have been filed more appropriately under the "Other" loss element, or on a different page of the claim form. For example, claimants used the "Support" field to claim for end-of-service gratuities or benefits, perquisites and allowances, which should have been filed as a claim for "Other" employment-related losses; and lost income resulting from the death of a spouse, which should have been more appropriately filed on the "C3" page as a death-related support claim. Other claimants used this field to claim for support payments they received from a family member prior to the invasion, but which they no longer receive due to the loss of their family member's employment as a consequence of the invasion and occupation.

In light of the diversity of the claims submitted under this loss element, and the likelihood that claims in future instalments may be as diverse, the Panel instructed the secretariat that only claims resulting from the following or similar circumstances should be classified as an employment-related support claim in order to facilitate the processing of the claims: (1) claims by gainfully employed persons whose ability to work has been permanently or temporarily affected as a result of a permanent or temporary disability or other injury; (2) claims by persons who are not yet employed, but who, as a result of a permanent disability, may never be able to be fully employed; and (3) claims by family members (see, definition of term "family unit", Part II, section 4. d., supra) of wage earners in Kuwait or Iraq who are unable to continue making certain payments such as alimony, regular dependent payments, subsistence payments, etc., to their family members, due to having lost their employment as a result of Iraq's invasion and occupation of Kuwait, or as the result of some permanent or temporary disability. The Panel further instructed the secretariat that claims arising out of other factual circumstances should be re-classified under a more appropriate loss type or element.

(c) Other

Claimants used the "Other" loss element field to submit claims arising out of a wide array of factual circumstances, and for a variety of elements comprising their remuneration (e.g., employment benefits, end-of-contract indemnity payments, etc.). As with wage and salary loss claims, typically, the amount indicated by the claimant in the "Other" field reflected the aggregation of several often very different employment-related losses. Unless the claimant had provided a statement breaking down the aggregate amount stated, the Panel was not able to determine which elements of a claimant's losses were reflected in that amount. The Panel's inability to disaggregate the amount claimed presented a particularly difficult set of processing problems in light of the fact that in many instances claimants appeared to have claimed for the same items in the "Wages and Salary" loss field and the "Other" loss field.

(iii) Re-employment, and/or New Employment

In order to obtain some indication of possible efforts claimants may have made to mitigate their losses, the "C6" page of the claim form also requests claimants to indicate whether they have "returned to Iraq or Kuwait and resumed work," and if so, the date they returned to work, the name of their new employer, and their salary in this job. A relatively small number of claimants completed these fields.

d) Evidentiary Patterns

Regarding the documentation to be provided in support of the claim, claimants are instructed on the "C6" page of the claim form to "[a]ttach a statement describing [their] damages and appropriate evidence demonstrating [their] entitlement to recovery," and for those claimants who may have had an employment contract to attach a copy. Claimants are also requested to "[a]ttach appropriate documentary evidence such as copies of pay slips and support payments." Claims for MPA resulting from the deprivation of all of the claimant's economic resources "must be substantiated by appropriate evidence."

In response to these requirements, over 90 percent of claimants in middle and higher income occupations, as well as a large number of claimants in low-income occupations, submitted some form of documentation relevant to establishing their claim, including full or partial copies of employment contracts; employer or government certificates or letters, or other official documents; pay stubs, books, statements or tickets; income tax papers; bank statements indicating direct deposits by their employer; wire transfer orders or confirmations; accounting ledger pages; and other "formal" documentation prepared by the claimant prior to the invasion in which the claimant states his or her annual or monthly remuneration (e.g., credit card application, loan application, rental or lease agreement, etc.); and witness and/or personal statements stating or attesting to the claimant's occupation, professional status and, occasionally, the elements comprising the claimant's remuneration.[294]

A small number of claimants in the First Instalment -- principally claimants in low-income occupations and a few in middle-income occupations -- failed to submit the documentation requested in support of their claims. Their inability or failure to do so appears to be attributable to several factors, some of which are identified and discussed in Part II, section E, supra, regarding the considerations relevant to assessing the materiality and weight of the evidence submitted. Additionally, in the present context, it may be noted that, in contrast to identification documents, travel documents, and perhaps certain financial documents, employment-related documentation is not likely to have been a high priority item for persons seeking to depart Kuwait or Iraq in haste. A number of claimants also have indicated that gaining access to such documentation was almost impossible due to the fact that, subsequent to the invasion, government offices and private businesses where their employment-related records were kept, remained closed. Several governments have attributed the paucity of documentation also to the general breakdown in civil order, the martial law imposed by the Iraqi authorities, and the awareness of persons who were in Kuwait of Iraqi efforts to suppress resistance efforts.

It may also be noted that the vast majority of low-income workers in Kuwait and Iraq did not have formal employment contracts and were often paid on a cash basis. Accordingly, many, if not most, are unlikely to have been able to provide the documentation requested on the claim form. In addition, many of the claimants in this group appear to have a low level of literacy and, in all probability, would not have understood the instructions on the claim form relating to evidence, nor would they have been able to produce and submit a statement "describing" their employment-related losses, or demonstrating their entitlement to recovery therefor.

Following the withdrawal of Iraqi troops from Kuwait, certain claimants in the higher income occupations may have had the opportunity and the means to obtain documentation relating to their former employment in Kuwait, particularly if they returned to or had never left the country in the first place. It appears, however, that given the situation in Kuwait following the end of the Iraqi occupation, many employers, including the Kuwaiti Government, were not in a position, or were slow, to respond to any attempts by non-Kuwaiti workers to obtain documentation relating to their employment. Low-income claimants who left Kuwait are unlikely to have had the means or the wherewithal to obtain the necessary information from Kuwait regarding their employment. Given their status, this would appear to apply also to low-income claimants who remained in

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[294] Based on the sample claims reviewed, it appears that claimants indicating higher income levels, and correspondingly claiming for higher amounts, generally submitted more substantive statements in support of their losses. The most common items of information contained in the sample statements reviewed include a description of the claimant's losses, a breakdown of the various elements comprising the claim, the length of time the claimant alleges he or she was unemployed, a description of the claimant's efforts to secure substitute employment, and explanations regarding the claimant's failure or inability to provide the requested documentation.

Kuwait. Documentation regarding employment in Iraq from employers there is unlikely to have been accessible or available to any category of claimants.

2) Processing Methodology

In sum, more than 300,000 employment-related claims are estimated to have been filed with the Commission; only 1,094 of these claims are being considered in this First Instalment. Employment-related claims comprise four very different types of losses, often arising out of very different factual circumstances, and raising legal and valuation issues specifically relevant to the particular loss element. These claims, therefore, are among the most complex and varied claims to be processed by this Panel, and do not lend themselves easily to mass claims processing procedures. Taking these factors into account, and the evidentiary patterns of the claims in this instalment, the Panel has adopted an appropriate processing methodology for each of the four loss elements. The Panel notes, however, that the methodologies developed for and applied to the claims may warrant modification to reflect issues raised by, and the number of, claims in future instalments, as well as the patterns of evidence and amounts claimed.

For "Wages and Salary" claims which constitute by far the largest component of employment-related relief sought by claimants, the Panel adopted a methodology entailing the review of sample claims, the use of statistical data regarding the patterns of evidence and the amounts claimed, a detailed study of employment-related legislation and international standards and factual information regarding employment practices in Iraq and Kuwait, and the computerized application of a compensation formula based on the foregoing and additional factors. For claims filed, or subsequently re-classified by the secretariat, as a "Support" claim, as well as for claims for MPA, given the relatively small number of claims, the Panel examined each case individually. Finally, regarding claims filed or re-classified under the loss category for "Other" employment-related claims, the Panel reviewed and resolved sample claims and instructed the secretariat to apply the results of this review to the non-sampled claims.

d. Wages and Salary Claims

1) Processing Issues

a) Proof of Fact of Employment

The Panel first considered whether claimants had established the fact of their employment in Iraq or Kuwait or a third country. In this regard, the Panel considered the fact that the vast majority of claimants responded to the basic employment-related information requested on the

"C6" page of the claim form relevant to verifying the fact of their employment. In addition, most claimants also submitted documentation supporting the fact of their employment in Iraq or Kuwait, including work permits or visas, employee identification cards, civil identification cards, etc.

Furthermore, the Panel took into account the fact that the predominant reason for expatriate workers, and in particular, those in low-income occupations, to travel to Iraq and Kuwait was for employment purposes. Insofar as Kuwait is concerned, they could only enter and remain there legally if sponsored. No information currently is available as to whether such requirements were also in place for foreign workers in Iraq. However, it may be assumed that most expatriates who were resident in Iraq prior to the invasion were there primarily (if not exclusively) for the purposes of employment.

In view of the foregoing, if the claimant has established the fact of his or her residency in Iraq or Kuwait prior to the invasion, and has provided some information confirming the fact of his or her employment, the Panel concluded that such claimants were indeed employed in Iraq or Kuwait.

b) Proof of Causal Link to Invasion and Occupation

Decision 1 requires that claimants' losses, including employment-related losses, must have been a direct result of Iraq's invasion and occupation of Kuwait. The factual circumstances surrounding wages and salary loss claims, as well as other employment-related losses, are well-documented and have been carefully considered by the Panel. They help to confirm that, to the extent that an individual claimant has established that he or she was resident in Kuwait or Iraq at the time of the invasion, it is likely that the claimant's losses resulted directly from the events surrounding the invasion and occupation of Kuwait. Accordingly, in the absence of evidence to the contrary, the Panel considers it appropriate to apply a general presumption that the employment-related losses suffered by a claimant were directly related to Iraq's invasion and occupation of Kuwait.

The Panel also considered whether claimants who were working or recruited in third countries (e.g., employees of foreign branch offices of Kuwaiti or Iraqi entities, foreign agents of Kuwaiti and Iraqi entities, persons employed and remunerated by a foreign company who were working on-site in Iraq or Kuwait, etc.) could be considered to have suffered a direct employment-related loss as a result of Iraq's invasion and occupation of Kuwait.

Neither Security Council resolution 687 nor Governing Council criteria giving effect thereto contain any suggestion that only employment-related losses arising out of an employment relationship where the work was actually performed in Iraq or Kuwait, are compensable. Resolution 687 states that Iraq is to be held liable for direct losses sustained by "foreign", i.e. non-

Iraqi, governments, their nationals and corporations, without specifically identifying any geographical limitations. Furthermore, Decision 1 refers to "any direct loss, damage. . . " resulting from Iraq's invasion and occupation of Kuwait, without specifying where such loss or damage should have occurred. While the language of Decision 1 does appear to impose a geographical requirement for certain of the losses for which Iraq may be held liable (e.g., departure-related claims), no such requirement is discernible in connection with employment-related claims.[295]

In light of the foregoing, claims based on an employment relationship situated in Iraq or Kuwait may be considered presumptively causally related to Iraq's invasion of Kuwait. Claims by claimants who were employed elsewhere, however, do not carry the same presumption. For these latter claims to be considered compensable, the Panel finds that a specific showing by the claimant is required, substantiated by appropriate evidence, that (a) his or her claim arises out of economic activity having a direct relationship with Iraq or Kuwait, and that (b) the claimant's employment was directly affected by the Iraqi invasion and occupation of Kuwait.

c) Proof of Income Level

The Panel considered whether sufficient proof was present to support claimants' assertions regarding their pre-invasion income, salary or wage level. The Panel has taken particular note of the Governing Council's guidance that the evidence must be the "reasonable minimum that is appropriate under the particular circumstances of the case," and that the evidentiary standard set may be commensurate with the amount claimed.

Over 90 percent of claimants in the First Instalment provided some form of evidence in support of their pre-invasion salary or income level. Evidentiary support such as pay stubs, bank statements, wire transfer confirmations, employment contract provisions, employer letters, published pay scales were considered by the Panel to be conclusive proof of the claimant's pre-invasion salary, wage or income level; also of the fact of the claimant's employment.

Where claimants had not provided such forms of proof, the Panel was able to verify generally the income or salary amount asserted on the basis of (1) the information provided by a claimant regarding his or her sponsor, which enabled the Panel in many instances to ascertain whether the claimant was working in the public or private sector, and/or which industry; (2) the number of years the claimant appears to have worked and lived in Kuwait and Iraq prior to the invasion; (3) information provided in the claim form, a personal or witness statement, and/or various identification documents relevant to establishing the claimant's occupation and occupational level; and (4) background information regarding expatriate employment patterns in Iraq and Kuwait, which served as a useful backdrop against which to evaluate and corroborate the information provided by claimants. From the sample claims reviewed, the Panel observed that the majority of claimants failing to provide any evidence in support of their asserted salary or wage level were persons in low-income occupations, such as domestic servants, day labourers, mechanics and gardeners.

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[295] See also, Part II. c., section 2.

Within the context of its methodology for processing wages and salary loss claims, and particularly in light of the satisfactory evidence provided by more than 90 percent of the claimants, as well as the conditions and circumstances bearing upon claimants' ability to produce relevant evidence, the Panel determined that all First Instalment claimants could be deemed to have proven their asserted monthly or annual salary, wage, or income, under the terms of Decision 1. Of particular importance to the Panel's finding was the correlation observed between a relatively low salary or wage level and the amount claimed, which, in relative terms, typically also was low.[296]

In view of the foregoing, the Panel determined that the claimant's asserted pre-invasion monthly or annual salary, wage, or income level should constitute a primary variable in the compensation methodology for wages and salary loss claims.

d) Proof of Value of Loss

Whereas the Panel was able to conclude that, in the context of a mass claims processing programme, the available evidence generally was sufficient to support claimants' assertions regarding their pre-invasion monthly or annual salary, wage or income, the Panel was not able to arrive at the same conclusion regarding the proof in support of the employment-related losses claimed. While a large number of claimants submitted documentation relevant to demonstrating their entitlement to recovery for salary and wage losses, an equally large number did not. Even in those instances where the claimant had provided material and relevant evidence, the evidence in many instances did not sufficiently corroborate the amount claimed or support the various elements upon which this amount is based. More often than not the documentation submitted was probative of only one aspect or a part of the total wage and salary loss claim submitted. Because of these difficulties, the Panel determined that it could not rely on the documentation submitted to value claimants' losses.

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[296] The Panel notes also that the secretariat made an effort to adjust where necessary, and possible, the salary or wage level asserted by the claimant in order to record accurately the claimant's remuneration. In a number of instances this entailed a re-classification of amounts representing benefits and allowances which were originally stated in the "Other" or "Support" fields, and a re-calculation of the claimants remuneration. This exercise was only possible where the claimant had provided sufficient documentation.

2) Compensation Criteria

In view of the limitations identified in the previous section regarding the proof in support of the value of a claimant's losses, the Panel developed a compensation methodology for wages and salary loss claims on the basis of several criteria. These criteria are discussed below.

a) International Standards and Precedents

Various international standards and precedents regarding the entitlements associated with wages and allowances due to employees upon the termination of their employment relationship, or the insolvency of their employer,[297] provided the Panel with a frame of reference for the purposes of identifying the relevant compensation criteria for employment-related claims in the present context.

International standards, as reflected in various ILO legislation,[298] recognize an entitlement on the part of terminated employees to compensation comprising remuneration for the remaining duration of a fixed-term contract; overtime pay, commissions, and other forms of remuneration relating to work performed, such as allowances for housing, children's education and cost-of-living differentials; holiday pay due as a result of work performed during the year and in the preceding year; amounts due in respect of other types of paid absence, end-of-year and other bonuses provided for by national laws or regulations, collective agreements or individual contracts of employment; payments due in lieu of notice of termination of employment; severance pay, compensation for unfair dismissal and other payments due to workers upon termination of employment; and compensation payable directly by the employer in respect of occupational accidents and diseases.

ILO standards and conventions have been relevant to the work of bodies commissioned to determine the compensation payable for employment-related claims arising out of the mass expulsion or flight of foreign or migrant workers from their place of employment.[299] The most significant precedent for the Panel's deliberations was provided by the terms of the settlements of the employment-related claims of Egyptian and Tunisian workers, all of whom were expelled from Libya in 1985. With respect to both the case involving the Egyptian workers[300] and that involving the Tunisian workers, it appears that all employees were awarded any unpaid back pay and allowances attributable to time actually worked prior to the expulsion. Claimants were allowed, in this regard, recovery for vacation time earned but non-utilized.[301] Employees on fixed-term contracts were awarded a sum representing the wages they would have received had they been able to continue working until the expiration date of their employment contract. Severance allowances (termination indemnities) were included as an element of claim for those having employment contracts of both fixed-term and indeterminate duration.[302] No significant efforts were made to determine whether claimants performed remunerated work after their expulsion and/or during the remaining term of the employment contract. Significantly, in both the Tunisian and Egyptian cases the discussion and eventual settlement of the claims relied heavily on the benefit and protective provisions of the applicable Libyan legislation.

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[297] Legislation on the protection of wages in the event of the insolvency of the employer was particularly useful in this regard, in that the entitlements generally accepted as valid claims in the case of insolvency proceedings are relevant to identifying the type of entitlements that may be taken into account in compensating wages and salary loss claims. It may also be noted that insolvency proceedings entail situations where the employer presumably is not in a position fully to meet its obligations -- which is not dissimilar to the circumstances being considered by the Panel in connection with wages and salary claims.

[298] See, e.g., The Protection of Wages Convention (1949), No 95; the Social Security (Minimum Standards) Convention (1952), No. 102; the Discrimination (Employment and Occupation) Convention (1958), No. 111; the Equality of Treatment (Social Security) Convention (1962), No. 118; the Employment Policy Convention(1964), No. 122; the Protection of Workers' Claims (Employer's Insolvency) Convention (1992), No. 173.

b) Applicable Kuwaiti and Iraqi Legislation

The Panel also has taken into account the law and practice in Iraq and Kuwait regarding the entitlements associated with wages and allowances due to employees upon the termination of their employment relationship, or the insolvency of their employer.[303]

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[299] See, e.g., Representation by the Egyptian Trade Union Federation in 1991 contending non-observance by Iraq of various ILO Conventions (alleging that Egyptian workers returning from Iraq after the invasion of Kuwait did not receive the wages owed to them contrary to the Protection of Wages Convention, and that Egyptian workers returning to Egypt prior to the invasion had not received wages due them as the Iraqi Government had stopped making deposits into bank accounts used for paying wages, thereby causing cheques delivered to the workers concerned not to be honoured by the banks); See also, Representation by the National Confederation of Workers of Senegal in 1989 contending non-observance by Mauritania of various ILO Conventions on the occasion of the expulsion of Senegalese working in Mauritania (citing the Mauritanian Labour Code which provides that in the case of "rescission" of the employment contract, "wages, additions to the wages, bonuses and allowances of all kinds payable to the worker at the time of the rescission shall be paid as soon as the employment ceases", ILO Governing Body considered that the Mauritanian government should establish the amounts due and make a final settlement in conformity therewith).

[300] The ILO Governing Body report on the representation by the Federation of Egyptian Trade Unions found that "a large number of Egyptian workers were dismissed from their jobs and expelled in 1985, without adequate provision being made for them to be paid their outstanding wages and other compensation due . . ." including "payment of any compensation due for termination of employment; payment of social security benefits and transfer of contributions which had been paid for acquisition of certain long-term benefits . . . ." ILO Document GB. 240/14/25, May-June 1988, paragraph 36.

[301] While this is normally considered a matter of right regardless of legislation, the Libyan Labour Code did make express provision for such recovery (Article 40).

[302] The applicable Libyan legislation at the time provided for the granting of severance allowances to all workers, whether under fixed-term or indeterminate-term employment contracts. Labour Code, Act No. 58-2970 of 1970, Article 47. However, there is no clear indication of whether the remaining term of an interrupted fixed-term contract would be taken into account in calculating the amount of the allowance (the allowance being based on length of service).

In the case of Kuwait, the labour legislation provides that if a fixed-term employment contract is terminated prematurely (other than for reasons stated in the contract) by the employer, the employee should be compensated for any loss he or she incurs, taking account of custom, the nature of the work, the term of the contract, and other circumstances relating to the loss -- the compensation not to exceed an amount representing the wage for the remaining period of the contract.[304] Under this language, therefore, there does not appear to be a necessary entitlement on the part of the worker to receive the total balance of the wage for the period of the contract.

The bankruptcy chapter of the civil law of Kuwait provides a preference or privilege for wages and salaries due for six months prior to the cessation of activities. The remainder of monies owing the worker is treated as a normal debt without preference.[305] Kuwaiti commercial law does not set out particular payments to be protected, but the labour law defines "wages" in a broad manner as including "every usual allowances, remunerations, commissions, grants or periodical gratuities."[306] Authorized commentaries on this provision further specify that incremental allowances (e.g. relating to seniority, cost-of-living increases, increases in family obligations, etc.), incentive remuneration and bonuses (which become obligatory if paid regularly over a period of time) are included within the definition of wages.[307]

The Iraqi Labour Code makes "wages" owed by the employer a privileged debt.[308] Wages are defined as any amount in return for work performed including bonuses if provided by law, rules or the contract of employment, or when they have been granted for at least three years and are "regular and general."[309] Iraqi labour legislation does not specifically provide for the consequences of a premature termination of a fixed-term employment contract except by the worker.[310]

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[303] Although the Panel recognizes that it has ample latitude to choose and adopt, or fashion, those rules and criteria that it considers will render substantial justice in respect of the claims before it, taking into consideration international law and practice, the Panel believes that it is not inappropriate to place some special emphasis on Kuwaiti and Iraqi law -- the law of the countries in which most of the employment contracts were performed.

[304] Law No. 38 of 1964, as amended, Article 53.

[305] Article 106, Law No. 67 of 1980. See also Articles 606 and 726 of Law No. 68 of 1960 (Business Law).

[306] Article 28, Law No. 38 of 1964, as amended.

[307] See *New Private Sector Labour Law*, Al Nama International, Kuwait, 1989, pp. 40-42.

[308] Labour Code, Article 12.

[309] See Labour Code, Articles 41-43.

c) Remuneration for the Duration of the Contract

International standards and practice would appear to recognize that losses of income representing the remainder of an employment contract, or a portion thereof, should represent a substantial element of the compensation payable to a claimant due to premature termination of an employment relationship. The law and practice in Kuwait, would appear also to entitle a claimant to an amount representing the remainder of his or her employment contract but also provides for reductions under certain specified circumstances. In a mass claims processing context -- particularly where it is anticipated that more than 300,000 claims must be processed on an expedited basis -- it would not be possible to base the amount of compensation awardable on the specific remaining term of each claimant's employment contract, assuming he or she had one. The complications associated with attempting to use such information is compounded by the fact that contracts in Iraq and Kuwait were often of indeterminate duration, and even if they were not, successive renewals of a fixed-term contract would have converted the contract into one of indeterminate duration by operation of law.[311]

Accordingly, to ensure that amounts representing the remuneration owed to a claimant for the remaining duration of his or her contract or employment relationship are reflected in the compensation payable, the Panel calculated and took into account the average term remaining on fixed-term contracts submitted with the claims in the First Instalment.

d) Pay in Lieu of Notice

The obligation of giving notice or, more pertinently, pay in lieu of notice to employees who lose their employment is recognized both in international law and practice,[312] and in Kuwaiti and Iraqi (according to one account) law. Since it may be presumed that no claimant was given notice of termination, at least in Kuwait (except perhaps fortuitously and for reasons other than the invasion), pay in lieu of notice, therefore, should also be reflected in the compensation awardable.

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[310] Indeed, fixed-term contracts are not envisaged in Iraq except for activities that are not permanent in nature. And these, seemingly, can be terminated only by the workers. See Labour Code, Articles 32 and 36-37 (regarding termination).

[311] See e.g., Law No. 38 of 1964 of Kuwait, as amended, concerning labour in the private sector, at Article 52 which reads: "If the labour contract is made for a fixed period and both parties continue to implement it after its expiry, it shall be deemed renewed for unlimited period under the same conditions specified therein."

[312] ILO standards speak in specific terms to the issue of pay in lieu of a period of notice. The Termination of Employment Convention provides for "a reasonable period of notice or compensation in lieu thereof." Article 11. The Protection of Workers' Claims (Employer's Insolvency) Recommendation provides that "payments due in lieu of notice of termination of employment" should (as opposed to might) be protected by a privilege. Paragraph 3 (1) (d).

The inclusion of pay in lieu of notice as a factor in the compensation calculation also serves to adjust for possible discrepancies that are likely to be present as a result of the Panel's decision to take into account the average of the remaining terms on fixed-term contracts. This derives from the fact that if fixed-term contract holders -- presumably the great majority of claimants -- are to recover for the balance of their contract, it would not be reasonable to introduce an additional payment representing pay in lieu of notice as this would, in a sense, be a form of double recovery. That is, the claimants will have already been paid for what would otherwise constitute the period of notice.

Legislation in Kuwait[313] applicable to private sector employees provides for 15 days notice of termination for monthly paid employees and seven days for others. A sampling of claims in which contracts were provided, and of various sample standard form contracts used by Kuwaiti public sector entities, indicate that the predominant period of notice in the public sector, or pay in lieu thereof, was three months.

The Iraqi Labour Code seemingly makes no provision for notice of termination, but then neither does it make provision for termination itself at the initiative of the employer.[314] On the other hand, the Code provides for the possibility of probationary periods for employees. This would suggest that there is a recognition that on completion of the probationary period the employee enjoys some greater measure of protection than that enjoyed during the probationary period, namely, and at a minimum, a requirement of notice of termination.

e) Unpaid Remuneration

In addition to the foregoing elements, remuneration arrearages also should be reflected in the compensation awardable for wages and salary loss claims. Secondary sources confirm that it was common practice in Kuwait and Iraq for employers to delay payment of salaries or to hold salaries as a means of forced savings for the employee; with respect to certain categories of claimants (e.g., domestic servants), for periods up to 12 months. In addition, it appears that wage payment practices in both countries were such that employees (principally those in low-income occupations) typically were paid their salaries during the first week of every month for the previous month's work. As a result of the urgent circumstances under which both employees and employers may have left Kuwait (and Iraq), many claimants in Kuwait may not have received payments owed to them by their employers when the invasion took place. This would be particularly true of many domestic workers who were left behind by their employers. No information is currently available regarding similarly situated workers in Iraq.

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[313] Law No. 38 of 1964, as amended, Articles 52-53.

[314] One reference indicates, without giving a source, that there is a standard, fixed period of notice of one month for all workers in Iraq. See ILO, Report VIII (1), op. cit. 1981, p. 60.

f) Benefits and Allowances

Benefits and allowances, such as vacation pay, education allowances, overtime or hazardous duty pay,[315] which were often part of employees' remuneration packages, also should be reflected in the compensation payable.

Paid leave time untaken as of 2 August in Kuwait is likely to represent a significant element of entitlement. Compensation for non-utilized leave time is in no way speculative and is most probably present in the quasi-totality of cases in view of the unforeseen and sudden nature of the termination of the employment relationship.[316]

ILO standards, in referring to claims that are to be taken into account in the insolvency context, include expressly "holiday pay due as a result of work performed during the year . . . and in the preceding year."[317] Although the Kuwaiti commercial law noted above does not cite specifically holiday or leave pay, it is presumably encompassed in the reference to "wages and salaries." The law stipulates 14 days leave after one year of service, and 21 days after five years of service.[318] Of equal importance in the case of Kuwait is the provision of a regulation specifying that upon termination "for any reasons," the employee is entitled to a cash payment in lieu of his or her accumulated leave balance on the basis of the final wage paid or owing.[319]

The Iraqi Labour Code provides for 20 days leave per year, increased by two days after each five years of service. As in the case of Kuwait, upon termination of employment for any reason, compensation is due for annual leave not taken on the basis of the last wage.[320]

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[315] The standard practice in Kuwait apparently was for overtime payment accounts to be settled towards the middle of the month. As such, overtime earnings for July 1990 would have been lost. No information is available regarding overtime pay rates and settlement dates in Iraq.

[316] At the same time it is difficult to estimate the weight of this element in view of the fact that specific information was not requested on the claim form and, judging from the samples reviewed, such information does not seem to have been volunteered except in a very few cases.

[317] Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No.173), Article 6 (b).

[318] Law No. 38 of 1964, as amended, Article 38.

[319] Ministerial Resolution of 1982 concerning Paid Annual Leave, Section 3.

g) Severance Allowances

Although severance allowances -- particularly those prescribed by legislation -- are neither universal nor necessarily very prevalent outside of the industrialized economies, such allowances are provided for in the laws of Kuwait.[321] Since the migrant labour force in Kuwait was a mature one, considerable entitlements had built up over the years. In contrast, the Iraqi Labour Code does not appear to provide for statutory severance allowances. However, it does appear that provision was made for such allowances in contracts for certain industries.

According to the Government of Kuwait, non-Kuwaiti terminated government employees are eligible to receive their end-of-service benefits, entitling each employee to a payment for the sum of one month's salary for each year of employment, to be distributed upon request in person, by proxy, or through any Kuwaiti Embassy.[322] The Government has reported that, as of the beginning of 1994, over 57,000 expatriate workers formerly employed in the public sector who did not return to Kuwait for the purposes of employment following the withdrawal of Iraqi troops, have been paid their indemnities. No reliable information is presently available to the Panel regarding the experience of persons working in the private sector in Kuwait in recovering or attempting to recover their end-of-service indemnities. Similarly, no reliable information is available in this regard for persons who had been working in Iraq.

Accordingly, although the Panel recognizes that certain claimants have been paid, or are entitled to be paid, their end-of-service indemnities, thus giving rise to the potential for multiple recovery, the Panel also recognizes that the end-of-service indemnity represented a considerable entitlement for certain employees. Balancing the risk of multiple recovery against the magnitude of the potential losses incurred by claimants, the Panel finds that the end-of-service indemnity or other severance entitlements should be taken into account in the compensation awardable. (The

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[320] Labour Code, Articles 67, 68 and 72. It is also specifically stated that such compensation must be paid on fractions of year (Art. 67). Article 73 (2) further provides explicitly for compensatory payments for leave not taken owing to serious reasons related to the work requiring the worker to defer his or her leave.

[321] Law No. 38 of 1964, as amended, Article 54. Provision is made for a "terminal indemnity" of 10 days for each year of service up to five years, and for 15 days for each year thereafter; the total not to exceed one year's pay. These provisions apply to those paid on an hourly, daily, weekly or piece work basis. For monthly-paid employees, the corresponding figures are 15 days for each year up to five, and one month per year thereafter, up to a maximum of one and a half years "indemnity." The indemnity in both cases would be payable for fractions of the year on a proportional basis and, as mentioned above, applies to employees with fixed-term contracts as well as those with employment contracts of indeterminate duration. These benefits accrue to the worker so long as he or she does not leave his or her job on account of unsatisfactory performance.

[322] See Council of Ministers Dec. Pursuant to Amiri Decree of 3 August 1990.

Panel notes, however, that claimants are not precluded from resorting to alternative measures to recover amounts due and owing to them for their end-of-service indemnities).

h) Mitigation

Finally, this Panel is of the opinion that the compensation payable to claimants should reflect claimants' efforts to mitigate their losses. International law recognizes, and indeed in certain instances imposes, an obligation on the part of an injured party to mitigate his or her losses. In this respect an injured party may not recover damages for a loss which he or she ought to or could have avoided by reasonable efforts. In addition, he or she must take into account any "benefit" that may have resulted (e.g., remuneration from substitute employment, or compensation paid by the claimant's former employer or other sources).[323] The claimant has a duty to take only reasonable steps to mitigate his or her damages.

In the present context, not knowing when the Iraqi occupation might come to an end, and/or whether they would have been able to rejoin their former employers when it did come to an end, claimants who departed Iraq or Kuwait should have made reasonable efforts to seek alternative employment within a reasonable period (perhaps three or four months) after arriving at their ultimate destination. Of course, claimants who did not or could not leave Iraq or Kuwait in the aftermath of the invasion, could not have found employment comparable to that enjoyed in those countries prior to the invasion until the occupation was over. In fact, given the circumstances in Kuwait following the withdrawal of Iraqi troops, it may have taken these claimants quite some time after the withdrawal to start working either in Kuwait or in another country. The period of mitigation for these claimants, therefore, would not commence until a reasonable time after 2 March 1991.

The Panel's formulation of a compensation methodology has taken into account these considerations regarding mitigation.

3) Compensation Methodology

In developing a valuation methodology for wages and salary claims the Panel has had to contend with an immense diversity of circumstances underlying the claims presented; equalled only by the diversity in the quality of their preparation and presentation. As discussed above, other claims tribunals called upon to resolve employment-related or similar claims have had the latitude to apply a claim-by-claim approach to evaluating and compensating the claims before them. In light of the large number of claims before this Panel, and the mandate that they be resolved on an expedited basis, the Panel finds that it cannot adopt such an approach. The Panel notes, however, that international law has provided no fixed measure or approach by which damages should be assessed, and that under international law decision makers have been vested with wide discretionary powers in both of these respects.[324] The Panel notes also that general principles of international law recognize that while compensation should be paid for all damages that may follow as a consequence of an unlawful act, it should not be paid for damages that are remote or speculative in nature.[325] The damages payable to a claimant should be "reasonable" in light of all the circumstances. That is, the total sum recovered must equal fair compensation for the losses suffered. Therefore, taking into consideration all of the various criteria discussed above, and the relative weight to be accorded to each of them, the Panel determines that a multiplier of seven should be applied to the claimants' asserted prior monthly salary, wage or income (as the case may be) in order to determine the amount of compensation awardable to claimants for wages and salary losses.[326]

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[323] Treitel, G.H., *Remedies for Breach of Contract - A Comparative Account (1989)*, at 179. In this regard the Panel notes that the secretariat made an effort to deduct amounts claimants indicated they had received either as remuneration from a former or new employer, or as compensation from their former employer, or in the form of government aid.

e. Support Claims

In view of the fact that very few employment-related support claims were reviewed by the Panel in the First Instalment, the Panel considered each case on its own merits. In each the specific evidentiary items submitted by the claimant relevant to establishing his or her entitlement to compensation for lost support was dispositive.

f. Other Employment-related Claims

As described above, generally the type of claims submitted in the field for "Other" losses include claims for end-of-service indemnities, employment-related benefits, and other losses more appropriately classifiable on a different loss page of the "C" claim form, or as a claim for "Support" losses.

Where separate claims were made by claimants for benefits and allowances or for an end-of-service indemnity, the amount representing such benefits and allowances or indemnity were factored into the calculation of the compensation awardable to claimants for their wages and salary loss claim.

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[324] Borchard, E., *The Diplomatic Protection of Citizens Abroad*, at 413 (1928).

[325] 1 Whiteman, M., *Damages in International Law* (1937); Jiménez de Aréchaga,E., *International Law in the Past Third of a Century*, 159 Recueil des cours (Hague Academy of International Law) 1, 286; *Manual of Public International Law* (Sorensen, M. ed. 1968).

[326] As noted above, a small number of low-income claimants failed to indicate a monthly or annual salary or wage. For these claimants the Panel used the most frequently observed wage rate among similarly situated claimants.

Claims for miscellaneous employment-related losses were reviewed and valued individually. The specific evidentiary items submitted by the claimant relevant to establishing his or her entitlement to compensation for the claims made were dispositive.

g. MPA Claims

With respect to employment-related MPA claims, the Panel determined that for a claim to be considered compensable, it should be clearly observable from the claim form and the attached documents that (1) the claimant was deprived of all economic resources; (2) such deprivation of economic resources seriously threatened his or her survival and that of his or her family; (3) the claimant did not receive or was not entitled to any form of assistance from public or private sources (e.g., social security or other government aid, room and board with a family member, etc.); and that (4) the resulting MPA occurred during the period of the invasion or after the claimant's departure from Iraq or Kuwait.

Relying on expert advice from a Panel of psychiatric experts, the Panel further agreed that a claimant should receive the ceiling amount compensable for claims in this category under the criteria of Decision 8 if he or she has one or more dependent family members, including a spouse, children or parents; or has suffered a serious personal injury or disease of such a nature as to prevent the performance or exercise of his or her profession or employment. In this instalment the Panel did not consider the issue of the amount of compensation awardable if one of the above two conditions is not met.

Based on the considerations discussed, the Panel arrived at the compensation recommendations for employment-related losses in this First Instalment as referred to in Part V and the Annexes, infra.

7. Loss Type "C7": Real Property Losses

Decision 1 para. 14, provides that compensation payments are available for "losses of income, . . ., housing or personal property. . . " resulting from Iraq's unlawful invasion and occupation of Kuwait.[327] Page "C7" of the category "C" claim form allows individuals to submit claims for losses related to real property, including costs incurred for repairing damage and other losses. The claim form elaborates on Decision 1's reference to losses of "housing" to specify that real property losses may include "repair costs," and does not specify the nature of other real property-related losses that may be claimed on this page. One type of claim that was observed in the claims of the First Instalment is that for the loss of rental income. The Panel determines that the losses of "income" referred to in Decision 1, in so far as such losses of income are related to real property, must be taken to include rental income losses. In making this determination, the Panel bears in mind not only the claim form's invitation to state all real property-related losses (e.g., in the "other" category), but also that Decision 1 confirms that losses of income are compensible under category "C". Therefore, these rental income losses will be considered by the Panel in this section.

This section of the Report discusses the Panel's factual, legal and processing considerations in developing its methodology and criteria for real property claims, in general, and more specifically for real property claims in the First Instalment. It also sets forth the Panel's compensation recommendations for real property claims in the First Instalment.

At the outset, the Panel observes that no claims have been included in the First Instalment for losses with respect to real property located in Iraq.[328] While a few of the "C7" claims in the First Instalment concern asserted losses to real property located in third countries, the following discussion and considerations of the Panel focus exclusively on real property located in Kuwait.[329]

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[327] Decision 1, para. 14.

[328] Although it is unlikely that a claim for real property located in Iraq may be filed, if such a claim is presented, the Panel will consider relevant issues at that point. The Panel notes that under Chapter II, Article 18 of the Iraqi Interim Constitution, ownership of immovable property is prohibited for all non-Iraqis, unless otherwise mentioned by law.

[329] Losses to real property located outside of Kuwait are addressed at the end of this section, see infra section 7.d.3).

a. Summary of Relevant Facts[330]

1) Real Property in Kuwait

Geographically, Kuwait is a relatively small country -- 10,700 square miles. According to United Nations reports, prior to the invasion of Kuwait there were over 260,000 dwelling units in the country, including single homes, residential complexes and apartment buildings. According to the 1985 census, there were more than 50,000 sizable villas, 40,000 large Eastern-style houses, 35,000 smaller residential independent units, 133,000 apartments. More than 70 percent of these were located in Kuwait City and its suburb Hawalli, with an additional 18 percent in the Governorate of Al Ahmadi and 11 percent in the Governorate of Jahrah. This clustering of single family homes and housing developments in Kuwait in particular areas or localities, resulting in relatively high costs and rental rates for real property, is due to the fact that more than 90 percent of the land is reserved for government use, such as oil development.

Forty percent of the housing stock comprised individual villas, usually of concrete construction and built to a good-to-high standard. These villas generally may have ranged in value up to $350,000. Apartment buildings were normally of a moderate standard, while those located along the coast were of particularly high quality. A study conducted by the Ministry of Electricity and Water in 1983 characterized the Kuwaiti residential sector as follows: the bulk of the sector consists of various types of villas, both single- and double-story, National Housing Authority-type residences (medium and low income) and apartment buildings. The building materials used for construction rely heavily on concrete structure, concrete building blocks, and decorative masonry products for the exteriors (sand, lime, brick, stone, marble and others). Windows normally utilize single glazing with clear glass. Aluminum sliding windows and doors are quite common. Shading devices are not common, but interior blinds and exterior overhangs are present in many buildings.

As noted above in the section discussing "C4" personal property losses[331], prior to the invasion Kuwaiti citizens enjoyed one of the highest per capita incomes in the world. Kuwaiti families and households typically are large in size. In relation to the relatively high level of personal wealth, housing for Kuwaitis generally consists of a single-family villa, or a shared villa. Apartment dwelling for a Kuwaiti family is virtually non-existent.[332] The sophistication and high cost of the residential units are reflected not only in the size of the residences and furnishings they contain, but also in features such as satellite TV systems and multiple garages to accommodate family cars.

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[330] Regarding the facts relevant to the description of, and main causes of losses to, real property in Kuwait as a result of Iraq's invasion and occupation, the Panel has relied on a number of sources including the following United Nations-sponsored reports: Farah Report; Ahtisaari Report; Kälin Report; (collectively the United Nations Reports). In addition, the Panel has considered materials submitted by or on behalf of the Government of Kuwait, including *Business Environment and Practice in Kuwait - Final Report*, prepared for PAAC by ArabDar Consultants (December 1993) (the "Arab Dar Report"); Supplementary Covering Report for Claims in Category "C" Submitted on Behalf of Individuals filed by PAAC on 14 April 1994 (the "Supplemental Report"), and the Affidavit of Shaker Mahmoud Madoo attached to the Supplementary Report. The secretariat also conducted field research in Kuwait in November 1993 which contributed to certain factual observations considered in this section.

[331] See supra Part IV, section B.4.a.

According to Kuwaiti law, ownership of real property, with several exceptions, is limited to citizens of Kuwait.[333] Given this restriction on ownership, and the relatively large expatriate population in Kuwait prior to the invasion, a large number of Kuwaitis were able to earn significant amounts of income from leasing and rental fees.

2) Real Property Losses in Kuwait

The losses to real property in Kuwait caused by Iraq's invasion and occupation fall generally into two categories: (a) damage and destruction to real property caused by Iraqi forces and other events related to Iraq's invasion and occupation, and (b) losses of rental income due to the disruption of on-going real property rentals.

a) Damages to Real Property

The damage to real property in Kuwait has been extensively documented in the United Nations reports referenced above.[334] These sources, as well as other information brought to the Panel's attention, provide a comprehensive picture of the destruction to real property, particularly in the coastal areas and on Failaka island. In Kuwait City alone, approximately 120,000 housing units were looted or vandalized. In Al Ahmadi about 35,000 residential units were ransacked, as were some 18,000 units in the Governorate of Jahrah. A much smaller number of residential housing units also were totally destroyed.[335]

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[332] In 1953, the Government of Kuwait began a public housing program that, in effect, provided a modern villa for each new Kuwaiti family, regardless of income. This was achieved through ready-built units in public housing projects, or through a scheme in which new families were allocated a parcel of land in residential areas, in addition to an interest-free loan to construct their homes. By 1989 this program was readying for allocation and distribution almost 3,000 single-family units per year.

[333] See e.g., Amiri Decree of August 1976 and Law No. 74 of 1979 of Kuwait (regulating the right of real property ownership of non-Kuwaitis).

[334] See supra n. 330.

Similar to the situation reviewed in relation to losses of personal property, the main causes of real property losses were the systematic destruction, as well as the looting and vandalism, by members of the Iraqi occupying forces, pursuant to official orders as well as unofficially. The United Nations reports state that the destruction of private and public property -- including private residences of well-known Kuwaitis -- was carried out under specific plans and orders issued by the Iraqi authorities. The more indiscriminate looting and vandalism of property is reported to have taken place at the "unofficial" level. According to the United Nations Reports, Iraqi soldiers on patrol and conducting door-to-door searches systematically ransacked entire neighborhoods. Houses, apartment complexes, offices, warehouses and similar places left untended by persons who had departed, were specifically targeted; however, occupied homes were not spared.

The United Nations Reports state that further damage to private property occurred at various times during the invasion and occupation of Kuwait as the Iraqi military damaged and destroyed private and public buildings. Residential structures with perceived strategic value along the Kuwaiti coastline were particularly targeted. As a result, many luxurious and large homes built along the coast and on Failaka Island were gutted and structurally damaged. Iraqi forces had occupied most of the houses in these areas and fortified a large number of them. The exteriors displayed particular evidence of damage since they were used to position troops and weaponry: pillboxes, bricked-up window apertures, bunkers and dug-outs have defaced the landscape along the coast, as well as in certain other locations considered to be of strategic value.[336] United Nations reports establish that before their retreat, the Iraqi military had destroyed office buildings, large hotels, industrial installations, including those of the Kuwait oil industry, and electrical power plants.

In addition to the damages described above, several examples of other common damage to real property include: forced doors and windows also resulting in damage to the accompanying frames; broken windows; theft of electrical fittings, including wiring, sockets and switch gear; the dismantling of plumbing pipework and fittings, which were subsequently stolen or broken; theft of or damage to air conditioners; damages to ceramic tiles resulting from sanitary fittings being pulled from fixtures in both kitchens and bathrooms; damages to paint and ceilings; destruction of elevators; general structural decline and debris.

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[335] Houses belonging to persons believed to be members of the resistance were in some cases burned. In one instance, 18 houses bordering a school were partially destroyed by Iraqi forces after the bodies of two Iraqi soldiers were found within the school compound. Kälin Report, at p. 57.

[336] For example, houses overlooking key traffic intersections were often occupied and fortified.

Additional causes of damage to real property include damage during the Allied Armed Forces offensive against Iraq, environmental conditions in Kuwait resulting principally from smoke from burning oil wells, and clean-up operations in Kuwait following the country's liberation from Iraqi occupation.

All of these reports of damage, destruction and looting corroborate the statements provided by claimants in the sample claims reviewed by the Panel that contain similar factual descriptions. As a result of damage to their real property, and the consequent costs incurred for labor and materials to repair structures, claimants have submitted losses on page "C7" of the claim form.

b) Losses of Rental Income

The damage and destruction to real property described above was inflicted on commercial buildings and apartment complexes as well as private residences. Further, as described above at length in the section addressing "C1" departure and relocation claims,[337] Iraq's invasion and occupation precipitated a massive departure by persons, both Kuwaitis and non-Kuwaitis, who had been living and working in Kuwait. Nearly 50 percent of Kuwaiti nationals and over 90 percent of the expatriate population left Kuwait after the invasion. The total population in Kuwait is reported to have fallen after the invasion from 2,142,600 to 492,000 persons. For those who stayed behind, the devastating impact of the invasion on economic life in Kuwait meant that most of them lost their employment, with no prospect for continuing income that could, in turn, be used to pay rent. Kuwait had enjoyed a relatively high occupancy rate for rental property prior to the invasion of 85 to 90 percent. In addition, lease contracts, usually for periods of one, three or five years, contained standard provisions for automatic renewal if no notice is given prior to the end of the lease term by either of the contracting parties.

In view of these factors, and in view of the description of damages to real property, including rental property described above, the Panel is persuaded that the invasion- and occupation-related circumstances that caused the mass dislocation of persons should be considered the factual basis underlying the disruption in the landlord-tenant relations that existed prior to the invasion.

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[337] See supra Part IV, section B.1.a.

b. "C7" Real Property Claims in First Instalment

The table below provides the total number of "C7" claims in the First Instalment by submitting country.[338] Most of the claims in the First Instalment relate to real property that is in Kuwait. All of the claims for property located outside of Kuwait were submitted by non-Kuwaitis. The First Instalment represents a small portion of the total number of "C7" claims expected. In the period ending 14 April 1994, the Government of Kuwait had submitted 5,799 such claims, with approximately 5,000 "C7" claims remaining to be filed. The total number therefore is estimated to range from 10,000 to 12,000.

NUMBER OF "C7" CLAIMS IN FIRST INSTALMENT BY COUNTRY	
Australia	1
Kuwait	27
Pakistan	1
United Kingdom	4
United States	2
TOTAL	35

Based on the claims reviewed, plus a review of claims not included in the First Instalment that was performed by the secretariat for purposes of Article 16 reporting, the Panel observes that real property claims appear to be fairly uniform in terms of the type and quality of evidence submitted in support of the claims, the manner in which the claims were prepared, and the type and value of the items for which claims have been submitted. This pattern emerges because virtually all of these claims are submitted by the Government of Kuwait on behalf of its nationals, and thus the claims have passed through the review and verification procedures implemented by Kuwait in its national claims programme. In addition, the losses, as noted above, break down rather easily into two categories: losses due to costs incurred for repairing damaged or destroyed property and losses of rental income.

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[338] The Panel notes that a number of claimants have submitted claims for small items (e.g., materials that were purchased to make repairs of real property) on page "C4" of the claim form rather than on page "C7". In view of the small number of these claims in the First Instalment, and the relatively small amounts involved, the Panel considered that they should not be transferred to loss category "C7", but instead should be processed under the approach adopted for "C4" personal property losses. For future claims instalments, however, the Panel may consider such claims under the methodology developed for "C7" real property losses.

c. Framework for Recommendations

1) Governing Council Decisions and Claim Form

The general standards and requirements established by the Governing Council that claimants must satisfy are set forth in Decision 1 and in Article 35 of the Rules, discussed in Part II, supra. Regarding real property claims, page "C7" of the claim form instructs claimants to "[a]ttach appropriate documentary evidence such as proof of ownership, repair costs and include a statement describing what happened to your property." The form provides space for the claimant to include the type of property; the name of the owner as it appears on the title, the official registration number of the property and the date purchased; the address of the property; the age of the structure and amount of floor space in square meters; and the percentage of the claimant's ownership. If the claimant's ownership is less than 100 percent, the claim form requests a statement from the claimant identifying the other owners and their respective ownership share percentages. In addition, the claimant is instructed to provide the original cost of the property (including improvements), as well as an estimate of its value as of 1 August 1990. Finally, space is provided for the claimant to provide the "estimated cost of repairs not yet completed", the "actual cost of repair work already completed" and any "other" losses (which have been determined to include losses of rental income). At the bottom of the "C7" page, the form allows the claimant to insert the total "value of loss" and states that additional sheets may be attached, if necessary.

2) Government Submissions in Response to Article 16 Report

The following issue was raised in Report No. 5 Issued Pursuant to Article 16 of the Rules:

> In category "C", many claimants have submitted claims for loss of rental income as a result of Iraq's invasion and occupation of Kuwait. The issue raised is what should be the appropriate time period used for calculating compensation, if any, for such loss of rental income.

The Panel has reviewed carefully and taken into consideration the responses to this issue submitted by several governments, including the Government of Iraq.

d. Processing Considerations and Methodology

1) Introduction

The Panel has reviewed the "C7" claims in the First Instalment in the context of the parameters set by the applicable Rules and Governing Council Decisions, the views expressed by governments and the information which has been provided in response to the claim form, as well as information made available from other sources. As noted above, the composition of the "C7" First Instalment (and the expected composition of future instalments) is rather homogeneous. This has permitted the Panel to assess the majority of real property claims in the First Instalment on a standardized basis. In addition, the relatively low number of "C7" claims in the First Instalment has facilitated a more detailed review of evidence in support of ownership and of the amounts claimed. To the extent permitted in terms of the scope of the First Instalment, the Panel has endeavored to develop criteria that may also be applicable to claims in future instalments of "C7" claims.

Set out below is a description of the most important issues raised and the specific considerations that, in addition to the factors set forth above, have contributed to the Panel's recommendations for these losses. The extent to which these principles and procedures will need to be developed further will depend on the characteristics and number of "C7" claims in future instalments.

In setting the various criteria, the Panel has consistently borne in mind the applicable general evidentiary standard in Decision 1, that claims "must be documented by appropriate evidence of the circumstances and the amount of the claimed loss," which will be "the reasonable minimum that is appropriate under the circumstances involved." Decision 1 adds that "a lesser degree of documentary evidence would ordinarily be required for smaller claims, such as those below $20,000."[339]

To give effect to the Governing Council's guidelines and standards, the Panel reviewed the claims to verify that claimants had established (1) the fact of ownership of the real property (or properties) on which their claim is based, (2) the fact of their loss and that it was causally related to Iraq's invasion and occupation of Kuwait, and (3) the value of their claim. The Panel has treated property located in Kuwait separately from property located outside the country.

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[339] Decision 1, para. 15 (a).

2) Real Property Located in Kuwait

a) Fact of Ownership

Virtually all of the claimants in the First Instalment provided evidence in support of the fact of ownership of the real property concerned. This observation is consistent with statements made by the Government of Kuwait in its Supplementary Report regarding its claims and the review procedures applied:

> Unlike many other losses, claims on Form C7 are often readily substantiated by documents proving ownership or title of the real property and the extent of loss or damage and the amount of loss. Most types of documentation needed for Form C7 claims [...] may be obtained by the claimant well after the time of loss. For this reason, PAAC has been quite stringent in its evidentiary requirements for Form C7 claims.
>
> For all real property losses, proof of ownership of the property and the amount of the loss is strictly required. The documentation is typically provided by Sales Contracts or other documents issued by the governmental agencies.[340]

The "C7" claims in the First Instalment were also consistently supported by claimants' personal statements and witness statements, which served mostly to provide details regarding the damages incurred.

Given the small number of claims in the First Instalment, the Panel was able to assess them primarily on their own merits. In light of the fact that nearly all of the "C7" real property claims in the First Instalment were supported by documentary evidence of ownership -- such as documents of title and other government registration documents, bank documents evidencing loans for the property concerned, and lease agreements between the owner and tenants -- the Panel has not had to consider whether an evidentiary standard reflecting proof of a lesser quality might properly be applied to claims demonstrating particular factual circumstances. Generally, however, the Panel would expect that, particularly in light of the comments made by the Government of Kuwait in its Supplementary Report, "C7" real property claims in future instalments would continue to have documentary evidence such as that referenced above in support of the ownership of the concerned property. Given that the amounts involved may often exceed US$20,000, a relatively strict evidentiary standard is consistent with the applicable evidentiary provisions in Governing Council Decision 1 and the Rules.

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[340] Supplementary Report, at p.53.

b) Fact of Loss and Causal Relation to Invasion

The factual circumstances surrounding the losses associated with real property in Kuwait have been documented and explained above. This factual framework allows the Panel to conclude that damage to real property, both public and private, was inflicted on a massive scale, especially in certain coastal and other strategic areas.

The assertions of real property damages reviewed in the "C7" claims of the First Instalment fit squarely into the overall pattern of losses suffered as a result of Iraq's invasion and occupation of Kuwait. The claims as a whole are consistent with the findings and conclusions stated in the United Nations reports and other information sources regarding the damages incurred.

In addition, as noted above, nearly all of the claimants supplied a personal statement and witness statement describing the particular circumstances of their loss, or the facts that they had departed from Kuwait during the invasion and had discovered the damages upon their return. The Farah Report notes that "[i]nspection visits . . . to all residential areas revealed widespread ransacking and vandalism of homes, shops and business enterprises. In the residential areas the damage was centered on those homes whose owners or tenants had fled the country at the time of the invasion."[341] The Panel takes into account that this absence of the owners or tenants, in many cases, not only facilitated Iraq's actions, but also hampered the ability of claimants to document, on an individual basis, the fact and the specific causes of the damages resulting therefrom. Nonetheless, copies of bills, receipts or estimates from expert appraisors, present in most of the claim files, generally establish both the fact and amount of damages.

Concerning losses of rental income, here too, the "C7" claims of the First Instalment fall within the overall pattern of losses suffered as a result of Iraq's invasion and occupation. Iraq's invasion and occupation not only caused extensive damages to the commercial buildings and apartment complexes located in Kuwait, it also ignited the massive departure of Kuwaiti and non-Kuwaiti individuals -- those who had been landlords and tenants, respectively, in Kuwait's commercial and residential rental markets. Moreover, this sudden mass exodus occurred in a real property rental market that had enjoyed high rates of occupancy. Many of the claimants have asserted losses by explaining that their rental units remained vacant for significant periods, due to lack of tenants or because the units had been damaged during the invasion and therefore were uninhabitable.

Taking into account the foregoing, the Panel is satisfied that virtually all of the claims in the First Instalment , for losses of real property in Kuwait have established the fact of the real property losses and their attributability to Iraq's invasion and occupation -- with respect both to the costs incurred for repairing damages and other real property related losses, such as rental income losses.

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[341] Farah Report, at p.99.

c) Valuation

For purposes of valuation, the Panel considered separately claims for the costs of repairs to real property and for losses of rental income.

(i) Valuation of Repair Claims

Claimants were able to express their losses from damages to real property on the category "C" claim form in terms of the "estimated cost of repairs not yet completed" and/or the "actual cost of repair work already completed." Costs of repairs have been observed to include the costs of labor and materials for repairs to structures. Although the background sources corroborate that such damages were widespread, the Panel relied primarily on the claims and attached documents in support of the specific amounts claimed.

Claimants generally submitted relevant and material evidence in the form of receipts, invoices and copies of bills to document claims for repairs already performed. Virtually all of the claimants commenced repairing their properties at some time significantly after Kuwait's liberation. As the Supplemental Report noted, there were delays in the ability to get repairs performed due to shortages in laborers, supplies and equipment.[342] Claimants may also have been aware of the possibility of submitting a claim for compensation for the amounts spent. This would be the case particularly where a claimant has procured an expert appraisal for repairs not yet performed. Generally, therefore, claimants may have had better access to relevant evidentiary items to support their claims, and have been more inclined to retain such items.

This assessment is reflected in the claims of the First Instalment, and also in claims that will follow in future instalments, with respect to which the Panel has had the benefit of the secretariat's observations on such evidentiary characteristics.

In light of all the considerations discussed above, the Panel accordingly adopted the following criteria for determining the amount of compensation payable for repair claims for real property located in Kuwait in the First Instalment:

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[342] Supplemental Report, at pp. 49-50. The Government of Kuwait also asserts that the costs of repairs were high during the period after the invasion due to shortages in Kuwait of labor, materials and equipment.

(1) claims for repair costs up to US$ 20,000 must have provided at least a statement in support of the amount claimed that includes (i) a description of the damages, and (ii) an explanation of the costs incurred; and

(2) claims for repair costs for more than US$ 20,000 must have provided documentary evidence in the form of receipts, invoices, copies of bills or expert appraisals in support of the amount claimed. If the amount claimed is not fully supported by such documentary evidence, the claim is reduced accordingly, with reference to the amount for which documentary evidence has been submitted and the US$ 20,000 threshold of Decision 1.

(ii) Valuation of Rental Income Losses

Number of Units and Rental Amounts: As discussed at the outset of this section, the Panel has determined that losses of rental income may be properly claimed on page "C7" of the claim form. Similar to the availability of evidence in support of real property repair claims, the Panel considers that the evidence in support of claims for rental income losses -- to establish the number of rental units and the corresponding rental amounts -- should be reasonably accessible to most claimants, even after the invasion. Documentary evidence to substantiate these facts may be submitted in the form of the sales contracts and title documents that also served in support of ownership of the property in question. In addition, the lease agreements would normally document not only the location of the property and the name of the landlord and tenant, but also the relevant number of units with respect to which a claim is made and the monthly rental rate for each.

The Panel observes that virtually all of the claimants in the First Instalment making claims for rental income losses have included such documentary evidence in support of their claims. Accordingly, the Panel has not had to consider whether an evidentiary standard reflecting proof of a lesser quality might properly be applied to claims demonstrating particular factual circumstances. Generally, however, the Panel would expect that, again in light of the comments made by the Government of Kuwait in its Supplementary Report, claims in future instalments for rental income losses would continue to have such documentation to establish their entitlement to compensation.

Period of Compensation: The Panel has considered a number of factors in arriving at its determination of the proper period for compensating losses of rental income for real property claims. The Panel also has had the benefit of a number of Article 16 comments from governments, including the Government of Iraq, on the issue of the relevant period of compensation. Factors particularly relevant to the Panel's decision include the period of the invasion and occupation, during which the damages to real property were inflicted and during vhich many of the landlords and tenants were absent from Kuwait; a reasonable period mmediately thereafter to account for continued vacancies and the need to rehabilitate and efurbish structures and the delays in obtaining necessary materials and labour; basic principles of mitigation in that the claimants should have made reasonable efforts to re-let their rental units; ractical considerations involved in processing many hundreds of claims on a fair and standard asis; and concerns of fairness to all claimants and to Iraq in the development of an equitable pproach. Therefore, taking into account all of these factors and the factual discussion above, he Panel determines that a multiplier of ten, representing a ten-month period, should be applied o the monthly rental rates established for each of the rental units underlying the claim.

3) Real Property Located Outside of Kuwait

The Panel reviewed the several claims that were submitted by non-Kuwaiti citizens for osses to real property located outside of Kuwait. All of these claims related to the dis-ontinuance of rental income that had been received by claimants prior to the invasion, resulting rom the claimants' return from Kuwait to their respective home countries to re-occupy their esidences. The Panel considered that such losses should be treated under the methodology dopted for "C1" departure and relocation claims,[343] and accordingly transferred these claims to hat loss category. With this transfer accomplished, the Panel observed that the real property osses that may be claimed on page "C7" of the claim form are effectively limited to real property ocated in Kuwait or Iraq.

Based on all of the considerations discussed in this section, the Panel reaches the ompensation recommended for "C7" real property claims referred to in Part V and the Annexes, nfra.

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[43] See supra Part IV.B.1.a.

8. Loss Type "C8": Individual Business Losses

Decision 1[344] provides that business losses of individuals may be part of consolidated claims under the expedited procedures set forth therein. Accordingly, individuals seeking expedited compensation of their business losses can file a claim on page "C8" of the "C" claim form.

a. Summary of Relevant Facts

1) Business Activities

Several publications provide a useful overview of relevant business activities, practices and regulations in Kuwait.[345] In 1990, there were 31,739 licensed business establishments in Kuwait. Of these, 31,665 operated in the private sector. Sixty percent of the private enterprises were involved in wholesale and retail trade activities, 25 percent in services, 13 percent in manufacturing and the remainder worked in construction.[346] The vast majority of businesses were small. In 1985, three quarters of all establishments employed only between one to four people.[347]

Kuwait's emphasis on trade was primarily caused by its lack of domestic agriculture and other raw materials. In 1988, the gross sales value of wholesale trade was approximately KD 1,147 million, and retail sales and commissions amounted to an estimated KD 3,027 million.[348] While considerable physical capital stock was accumulated, throughout the seventies and eighties, in every sector of the economy, factors such as Kuwait's distance from major markets caused most of the investment in trade to be in inventory stocks.[349]

2) Business Practices

One of the main features of business practices in Kuwait is the extensive reliance on cash transactions. Nearly all retail sales, and most of the wholesale transactions, are conducted using bank notes and coins, rather than bank transfers, cheques and credit cards. Many businesses keep substantial amounts of cash at hand.[350] The business climate is informal and deeply rooted in Kuwaiti culture. Businessmen generally rely on verbal promises rather than on written contracts. In view of the absence of taxes and insurance, most businesses, especially the smaller ones, do not issue receipts or keep financial records.[351] Indeed, most of them are not required by law to appoint auditors or to have proper financial statements. Businesses employ few, if any, record-keeping systems and procedures.[352]

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[344] S/AC.26/1991/1, para. 5.

[345] Arab Dar Report; Supplemental Business Report on Claims for Individual Business Losses, Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression, 30 May 1994 (the "Supplemental Business Report").

[346] Arab Dar Report, at p. 18.

[347] Supplemental Business Report, at p. 2.

[348] Id.

[349] Arab Dar Report, at pp. 111, 112.

3) Forms of Business

The most common form of business in Kuwait is the sole proprietorship, also known as an "establishment." In 1985, this type of enterprise represented approximately 77 percent of all registered businesses. The sole proprietorship, mostly used for small businesses, has no separate legal identity. In addition to the sole proprietorship, the Kuwaiti Law of Commercial Companies defines the following seven forms of organization: general partnership; limited partnership; joint venture; public shareholding; closed share company; limited liability company; limited liability partnership. The Law of Commercial Companies states that, with the exception of the (contractual) joint venture, all of these seven types possess legal status.[353]

4) Business Licence and Ownership

Kuwaiti law requires a person who wishes to start a business to obtain a licence (permit) from the Ministry of Commerce and Industry. In principle, only Kuwaiti nationals qualify for such a licence.[354] A similar restriction exists with regard to the various registration requirements in force. A commercial registration is made upon application by a Kuwaiti citizen or a company with 51 percent of its capital stock owned by Kuwaitis. The fact that business ownership legally is generally reserved to Kuwaiti nationals[355], has created a practice whereby a person who wishes to undertake commercial activities "rents" a permit from a Kuwaiti permit holder.[356]

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[350] Id., at pp. 120-122.

[351] Id., at p. 110; Supplemental Business Report, at p. 18.

[352] Arab Dar Report, at pp. 110, 123.

[353] The Supplemental Business Report notes that the general partnership also entails personal liability of the partners. Supplemental Business Report, at p. 4.

[354] Article 2 of Law 32 of 1969. The few exceptions to this rule mainly concern peddlers and limited categories of small shops. Affidavit of Assaad Abdelkarim Al-Zankawi, 18 May 1994, Supplemental Business Report, exh. 2, referring to Article 23, para. 2, Kuwait Code of Commerce (enacted by decree-Law No. 68 of 1980).

[355] Article 23, para. 1, Kuwait Code of Commerce.

Such "rent-a-permit" arrangements -- which are also concluded among Kuwaiti nationals -- form a widely used business custom in Kuwait. While the terms agreed by the parties, verbally or in writing, vary from case to case, two types of arrangements are commonly found: the licence user runs the business without any interference or financial participation on the part of the licence holder, who is generally rewarded for the use of his licence through payment of a fixed monthly fee; or the licence holder provides part of the capital, in which case he may receive a percentage of the business income.[357]

The Second Report Issued Pursuant to Article 16 of the Rules raised the question of how foreign permit users can demonstrate their ownership interests in businesses that were registered under the name of Kuwaiti citizens.[358] Several governments, including that of Iraq, have submitted comments in response thereto.

5) Losses Suffered

The damages to businesses in Kuwait have been extensively documented in Unitec Nations-sponsored reports and in submissions made by and reports prepared on behalf of the Government of Kuwait.[359] Together, these sources provide a comprehensive picture of the widespread destruction visited upon nearly every sector of the Kuwaiti economy.

The effects of the occupation on Kuwait's economic and commercial life wer "devastating."[360] Summarizing these effects, the Farah Report notes that "[t]he physica infrastructure supporting basic services - electricity, water, waste disposal - had been renderec inoperative; ports largely destroyed; oil production and refining and related offloading activitie crippled; the financial system severely disrupted; foreign trade suspended; commerce considerabl diminished; manufacturing paralysed; and inventories plundered."[361] The Explanatory Statemen includes photographs of damages to the infrastructure in Kuwait, many of which relate to busines properties.[362] Such damages did not only result from military clashes and random vandalism; many of the losses are attributed to deliberate destruction and organized looting and removal of property by the Iraqi forces.[363]

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[356] Supplemental Business Report, at pp. 5-7.

[357] Affidavit of Assaad Abdelkarim Al-Zankawi, 18 May 1994, Supplemental Business Report, exh. 2.

[358] Article 16 Report No. 2, at para. 13.

[359] Farah Report; Kälin Report; Explanatory Statement; Supplemental Business Report.

[360] Farah Report, at para. 42.

[361] Id., at para. 43.

As noted, many businesses were small, and a considerable percentage were involved in trade activities. This pattern is reflected in the First Instalment and, given the nature of the "C" claims category, is likely to continue through future instalments. Describing the plight of many such businesses, the Farah Report states that "[t]he looting of wholesale and retail establishments was massive and spared virtually no commercial centre, warehouse or large store. Estimates in this area can only be very tentative, yet losses (excluding vehicles) could easily approach $1 billion."[364] The Farah Report emphasizes the massive scale of the damages: "Virtually all commercial complexes of the country have been plundered. Wherever there were concentrations of retail businesses or establishments, a great number, if not all of them, have been looted."[365] As a result, it is observed that "[f]or numerous large-, medium- and small-sized commercial firms, losses amount to 50 to 100 per cent of the merchandise stored there on 1 August 1990."[366] It is further noted that such physical damages also caused an enormous loss of output and income; virtually paralyzed, the Kuwaiti economy came to a standstill.[367]

b. Claims in First Instalment

The tables set out below give the total number of "C8" claims in the First Instalment by submitting country and provide a breakdown by range of the amounts claimed. Nearly all claims in the First Instalment relate to businesses that were established in Kuwait. The First Instalment represents a small portion of the total number of "C8" claims expected. In the period ending 24 May 1994, Kuwait has submitted 1,671 such claims, with approximately 2,500 "C8" claims remaining to be filed. The number of "C8" claims from all other countries currently is assumed to range from 5,000 to 10,000.

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[362] Explanatory Statement, exh. II.

[363] Farah Report, at para. 19. Emphasizing the systematic character of Iraq's actions, the Supplemental Business Report notes that this pattern is also evident in the numerous documents left behind by departing military forces, a compendium of which has been provided to the Commission. Several volumes of this compendium contain permits for the transport to Iraq of items taken from specified businesses in Kuwait. The Supplemental Business Report notes that the sheer volume of these documents, representing a small sample of the documents left behind by the departing forces, indicates the tremendous extent to which materials were stolen from businesses in Kuwait and taken to Iraq. Supplemental Business Report, at pp. 9, 10.

[364] Farah Report, at para. 62.

[365] Id., at para. 518.

[366] Id., at para. 522.

[367] Id., at paras. 51, 66.

NUMBER OF C8 CLAIMS IN FIRST INSTALMENT BY COUNTRY	
Australia	1
Denmark	1
Pakistan	125
Poland	1
United Kingdom	4
United States	2
TOTAL	134

RANGE OF AMOUNTS CLAIMED IN C8 FIRST INSTALMENT (US$)	
RANGE	# OF CLAIMS
No Amount Mentioned	2
0-10,000	21
10,000-20,000	28
20,000-30,000	22
30,000-40,000	13
40,000-50,000	12
50,000-75,000	18
75,000-100,000	11
100,000 +	7

c. Framework for Recommendations

1) Governing Council Decisions

The following Governing Council Decisions are specifically applicable, in whole or in part, to "C8" individual business losses.

a) Decision 1

Having provided, through this Decision, the general basis for the submission of business losses in the "C" claims category, the Governing Council in this Decision also indicated that it would issue further advice as to the types of business losses eligible for consideration thereunder.

b) Decision 4

Decision 4 provides such further guidance. Elaborating on the general listing of eligible losses contained in Decision 1[368], it states:

> (g) Preventing access, removal, looting and destruction are examples of circumstances under which business losses may have occurred.
>
> (h) Premises, equipment and stock are examples of business property whose loss may be claimed.
>
> (i) Damage to intangible assets, lost business revenues and losses in connection with contracts may only be claimed if they are a direct loss resulting from Iraq's invasion and occupation of Kuwait.[369]

Decision 4 furthermore indicates the categories of claimants who are eligible to file a claim for their business loss in the "C" claims category, and those who should file their claim in a different claims category. Specifically, it provides as follows:

> (a) The owner of a single proprietorship may claim for his business losses.
>
> (b) Losses suffered by a business entity that has separate legal personality must, in principle, be claimed by that entity on another claim form.
>
> (c) Losses suffered by a partnership which has no separate legal personality must, in principle, be claimed jointly by all partners.
>
> (d) In the event that a partnership which has separate legal personality is, because of its nationality, not eligible to claim for its losses, each of the eligible partners may claim pro rata for his proportionate interest.
>
> (e) In the event that, because of his nationality, a partner of a partnership which has no separate legal personality is not eligible to join in a claim for losses suffered by the partnership, each of the eligible partners may claim pro rata for his proportionate interest.
>
> (f) Shareholders of a corporation which [is not able] [because of its nationality, is not eligible] to claim for its losses, may claim for losses with respect to that corporation. The same applies, mutatis mutandis, to members/shareholders of other business entities akin to shareholdings.

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[368] Decision 1, para. 18.

[369] Decision 4, p. 2.

c) Decision 9[370]

Extensive follow-up on the question of eligible losses briefly discussed in Decision 4 is contained in Decision 9, entitled "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation." The Panel refers to the full text thereof. In this Decision, the Governing Council discusses the issue of the trade embargo and related measures and resultant impact on the economic situation (which will not be accepted as the basis for compensation)[371]; contractual losses and losses based on past business practice (for which Iraq is liable if they have resulted from the invasion and occupation of Kuwait)[372]; losses relating to tangible assets (providing, inter alia, that "[w]here direct losses were suffered as a result of Iraq's invasion and occupation of Kuwait with respect to tangible assets, Iraq is liable for compensation. Typical actions of this kind would have been expropriation, removal, theft or destruction of particular items of property by Iraqi authorities," adding that "[w]hether the taking of property was lawful or not is not relevant for Iraq's liability if it did not provide for compensation.")[373]; and losses relating to income-producing properties (the economic value of which in principle includes loss of future earnings and profits where they can be ascertained with reasonable certainty).[374]

d) Decision 15[375]

The Governing Council has further addressed the causal issue of the trade embargo in Decision 15. The Panel refers to the full text of this Decision. Following introductory comments regarding admissible loss types and direct causal relationship, which largely reflect previous Decisions, it explores questions of causality raised by various situations involving the trade embargo. The Decision states the principle that "compensation will be provided, if and to the extent that loss, damage, or injury resulting directly from Iraq's unlawful invasion and occupation of Kuwait was actually suffered and would have been suffered irrespective of whether the trade embargo and related measures had been in force."[376]

e) General

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[370] Decision 9.

[371] Id., at para. 6.

[372] Id., at paras. 7-11.

[373] Id., at paras. 12-15.

[374] Id., at paras. 16-19.

[375] Decision 15.

[376] Id., at para. 9.II.(i).

The Governing Council's Decisions, while intended to provide general guidance on the subject of individual business losses, acknowledge the necessity for the Commissioners to determine applicable legal principles and to make factual assessments in accordance with the circumstances of the claims before and the tasks accorded to them. Decision 9, for example, states in part:

> 3. This Decision does not attempt to describe all of the conceivable factual and legal situations resulting from Iraq's invasion and occupation of Kuwait. Bearing in mind Security Council resolution 687 (1991), other types of losses may have been suffered, and they are eligible for compensation if they result from Iraq's invasion and occupation of Kuwait. Ultimately, it will be up to the Commissioners to identify the applicable principles and apply them to the circumstances of particular cases.
>
> 4. The propositions and conclusions contained in this Decision are not intended to be a comprehensive statement of relevant principles.

Similarly, Decision 15 provides, inter alia, that "[t]hese guidelines are not intended to be exhaustive. There will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait,"[377] and that "[i]t will be for Commissioners to draw on the principles in this guidance when making their judgements on actual cases which will stand or fall according to their specific factual and legal situations."[378]

2) Government Submissions in Response to Article 16 Reports

A number of governments have submitted comments in response to issues specifically relating to individual business losses raised in reports issued pursuant to Article 16 of the Rules. As previously mentioned, several governments have commented on the "rent-a-permit" issue described in para. a.4), supra. In addition thereto, a number of governments, including that of Iraq, have contributed views on questions raised in the First Report Issued Pursuant to Article 16 of the Rules regarding increased insurance costs and valuation of sales losses;[379] comments have also been received on the issue of valuation of loss of business income mentioned in the Second

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[377] Id., at para. 6.

[378] Id., at para. 9.

[379] Article 16 Report No. 1, at paras. 14, 15. Although stated in relation to the "D" claims category, these issues are relevant to "C8" losses by analogy.

Report Issued Pursuant to Article 16 of the Rules;[380] and several governments, again including that of Iraq, have submitted their opinion on the issue of loss of business income specifically for the "C" claims category, as reported in the Third Report Issued Pursuant to Article 16 of the Rules.[381] In arriving at its views, the Panel has carefully considered these comments.

3) Claim Form

The "C8" page of the claim form indicates the categories of claimants who are eligible to file a claim for their business loss in the "C" claims category. In doing so, the form generally reflects the provisions of Decision 4, cited in para. c.1).b), supra. In connection with this threshold issue, the form requests the claimant to indicate the "legal status of business," offering a choice between "proprietorship," "partnership," "corporation" and "joint venture." The form states that if the business constitutes a partnership or joint venture, the claimant is to provide "name, shares of ownership, address and nationality of the other participants in the business." The form instructs that "[c]laims for jointly owned businesses should be submitted jointly with the other participants in the business in the country in which the business is located."

Supplementing the information requested on the claimant identification "CID" page of the claim form, the "C8" page asks the following identifying data: the name and address of the business, the "name under which the business licence was held," the "business identification number," and the "chamber of commerce ID." The claimant is also requested to indicate the "no. of years in this business."

On the subject of the nature and amount of the loss, the form instructs the claimant to attach a statement "describing what happened (e.g., prevention of access, removal of property, looting or destruction) and the steps [the claimant] took to reduce [the claimant's] loss or damages." In this connection, the claimant is also asked to indicate whether the business has resumed functioning. In addition to providing the value of the loss, the claimant is to submit "appropriate documentary evidence that supports [the] calculated value of loss" and a "statement describing [the] method of valuation."

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[380] Article 16 Report No. 2, at para. 14. Again, although stated in relation to the "D" claims category, this issue is relevant to "C8" losses by analogy.

[381] Article 16 Report No. 3, at para. 21.

d. Processing Considerations and Methodology

1) Introduction

The Panel has reviewed the "C8" claims in the First Instalment in the context of the parameters set by the applicable Rules and Governing Council Decisions, the views expressed by governments and the information which has been provided in response to the claim form as well as that which has become available from other sources. Individual business losses distinguish themselves from the other loss elements in the "C" claims category because they present preliminary questions of business organization and ownership and may raise more complex valuation issues. Also, many of the "C8" claims may be expected to involve significant amounts. Discussing individual Kuwaiti business claims, the Supplemental Report concludes that these are "among the more difficult and time-consuming to process."[382]

The composition of the "C8" First Instalment is rather homogeneous, however. Containing no Kuwaiti claims, it comprises more than 90 percent of Pakistani claims. Their review shows that these claims generally relate to the same type of enterprise and similar business activities,[383] and for the most part are for relatively limited amounts. This has permitted the Panel, notwithstanding the potential diversity and complexity of this loss element, to assess the majority of business claims in the First Instalment on a standardized basis. In addition, the relatively low number of "C8" claims in the First Instalment has facilitated a more detailed review of evidence for amounts claimed which, in the Panel's view, warranted such an approach. To the extent permitted in terms of the scope of the First Instalment, the Panel has endeavored to develop criteria that may also lend themselves to application to future instalments of "C8" claims.

Set out below is a description of the most important issues raised and the specific considerations that, in addition to the factors set forth above, have contributed to the Panel's recommendations for these losses. The extent to which these principles and procedures will need to be further developed will depend on the characteristics of future instalments of "C8" claims.

In setting the various criteria, the Panel has consistently borne in mind the applicable general evidentiary standard laid down in Decision 1. As noted previously, this Decision records the Governing Council's determination that claims "must be documented by appropriate evidence of the circumstances and the amount of the claimed loss," which will be "the reasonable minimum that is appropriate under the circumstances involved." Decision 1 adds that "a lesser degree of documentary evidence would ordinarily be required for smaller claims, such as those below $20,000."[384]

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[382] Supplemental Business Report, at p. 17.

[383] Some 60 percent of the claimants in the First Instalment were engaged in (semi)skilled activities, providing technical services or working as tailors, hairdressers, and in other similar professions; roughly 20 percent operated small retail stores; and most of the remaining claimants were involved in the construction business.

As a preliminary matter, it should be noted that the Panel's review of the First Instalment has revealed that a sizeable number of claimants seeking compensation for business losses appear to have misinterpreted the claim form. Claimants have recorded business losses using one or several inappropriate loss pages, mainly the "C4", "C6" or "C7" pages, and frequently in combination with other losses. Of these persons, some have not used the "C8" page at all, while others have, often in an overlapping way. Those who have not used the "C8" page may nevertheless have indicated a loss amount in the summary of losses stated on the "CS" page of the form. In an effort to minimize the effect of this and of any other difficulties attendant on the processing of these claims, based on a detailed analysis of every loss page, a number of claims have been "reconstructed" in accordance with the purpose of the "C8" loss element.[385]

2) Existence of Business

The "C8" loss element relates to individual business losses. The first issue addressed is whether there was indeed an operating business. In addressing this question, the Panel took account of several impediments affecting the claimants' evidentiary position. An obvious problem is one that nearly all claimants before the Commission faced: their ability to prove their case by specific items of evidence was hampered considerably by the destruction and looting of their assets as well as by their forced departure from their residence or place of business. In the case of non-Kuwaiti claimants, such as those who make up the entire First Instalment of "C8" claims, this problem has been compounded by the fact that many have not returned to Kuwait or Iraq. In this connection, it may be noted that the vast majority of "C8" claimants in the First Instalment have indicated that their business has not resumed functioning. A problem that is specific to the "C8" loss element, the ability of non-Kuwaiti claimants to proffer evidence, may have been further impaired by the "rent-a-permit" system described in para. a.4), supra, requiring these persons to operate their business using another person's licence.

While a considerable percentage of claimants nevertheless were able to submit some form of documentary proof of the existence of the business, many claimants have, at most, submitted brief statements to that effect. However, the Panel notes that, directly or indirectly, a number of questions on the claim form also impact on this issue. A review of the claims has indicated that every claimant has provided at least a combination of several of the following relevant items of information: the name of the sponsor; the address and/or telephone number of the sponsor; the name of the business; the address of the business; the name of the licence holder; the business identification number; and the chamber of commerce ID. In addition, considering the general impossibility for non-Kuwaitis to reside in Kuwait without employment (which may take the form of a business), it is relevant to note that practically all claimants have submitted a copy of their work/residency permit.

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[384] Decision 1, para. 15 (a).

[385] See Part IV, section A.3., supra, for a general discussion of these types of processing issues.

The Panel finds that the information thus provided constitutes evidence of the businesses at issue. The credibility of this evidence is enhanced by its specific character, which, as claimants may have realized, in principle lends itself to verification.

3) Eligibility of Claimant

The second preliminary issue addressed by the Panel is whether the legal status of the business, to which the claim pertains, meets the requirements of Decision 4. As noted, the chief stipulation of these requirements is that the loss must have been incurred by an unincorporated business, such as a sole proprietorship or certain forms of partnership.

Given the types of business activity and the small size of most businesses in Kuwait, many non-Kuwaiti "C8" claimants may not have been well-equipped to address this relatively sophisticated legal question -- nor for that matter, as the overall level of completion of the claim form suggests, a number of other issues relevant to the outcome of their claim.[386] Indeed, while the majority of claimants in the First Instalment have indicated that their business was a sole proprietorship or, in fewer instances, a partnership, some 40 percent have failed to check any of the boxes provided on the claim form for this purpose. The Panel does not exclude the possibility that misinterpretation of this part of the claim form may have contributed to this result. Furthermore, it is conceivable that a number of claimants have interpreted their situation in light of the organization of businesses under the legal system of their country of nationality.

The claim form does not expressly instruct claimants to document the legal form of their business. Although a number of claims nonetheless are accompanied by statements or documentary evidence on this subject, the Panel therefore generally has assessed the claims on the basis of the information claimants have provided on the "CID" and "C8" pages of the form. Of particular relevance for this assessment is the business activity in which the claimant indicated he was engaged. Additionally, the Panel has had recourse to external background data at its disposal with regard to particular categories of claimants.[387]

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[386] For a general discussion of the presentation of certain claims, see Part III, section D.3., supra.

[387] E.g., Economic Impact of Gulf Crisis in Pakistan, Farooq-i Azam, Overseas Pakistani Foundation (1991).

Based on this information, which suggests that the vast majority of claimants in the First Instalment operated sole proprietorships, and bearing in mind the considerations described above, the Panel has satisfied itself that the claims in the First Instalment meet the eligibility requirements set out in Decision 4. In one instance, the Panel recommends that, pursuant to Article 32, para. 3, of the Rules, the claim be transferred to the "E" category of claims for corporations and other entities.[388]

4) Ownership

As previously noted, pursuant to Kuwaiti law, most businesses operated under a business licence held by a Kuwaiti person. Generally, however, it was the licence user, and not the licence holder, who ran the operation under this "rent-a-permit" arrangement. The Kuwaiti Government itself has confirmed this in a submission on the subject, summarizing that the licence user "deal[s] with all third parties, private and public, in connection with the running of the business, including the operation of the business' bank accounts, buying, selling, receiving funds, etc."[389] In practice, therefore, the permit user developed the business and depended on it economically.

The fact that these persons seek compensation for the loss of the business, and the diverse and detailed information they are able to provide with regard thereto, reflect this reality. Nevertheless, under certain circumstances, the "rent-a-permit" system raises the issue of extent of ownership of the interests which have allegedly been lost. In exploring this issue for the purpose of resolving the claims in the First Instalment, the Panel has considered a number of factors.

The evidentiary considerations set out in paragraph d.2), supra, apply here as well. Businesses were destroyed and claimants fled the country. The affidavit submitted by the Government of Kuwait with regard to the licence system notes that "a large number of foreign licence users left Kuwait after the invasion and have not returned."[390] The fact that their businesses often were registered in the name of a Kuwaiti may further limit the ability of these claimants to collect evidence. Under these circumstances, the Panel considers justifiable the question of the nature of the evidence they could be expected to procure. Indeed, the claim form does not stipulate that claimants are required to submit evidence establishing their ownership of the business at issue.

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[388] See Part V andAnnex IV, infra.

[389] Affidavit of Assaad Abdelkarim Al-Zankawi, 18 May 1994, Supplemental Business Report, exh. 2, at para. 14.

[390] Id., at para. 24.

However, their very submission of claims relating to these businesses implies an assertion of ownership and may be taken as personal statements to that effect. To a certain extent, the credibility of such evidence finds confirmation in these claimants' submission of the specific data referred to in para. d.2), supra.

The Government of Kuwait has submitted information that may further alleviate potential concerns about the possibility that the licence user and the Kuwaiti licence holder present overlapping claims with regard to the same business. The description provided of the most commonly found "rent-a-permit" situations suggests that the licence holder's role primarily was to act as sponsor vis-à-vis the Kuwaiti government; apparently, it was the exception for the licence holder also to furnish the entire capital of the business.[391] The Supplemental Report indicates that claims submitted on behalf of Kuwaiti permit owners generally either have been prepared with the cooperation of the licence user or relate to the loss of the income that the holder derived from the "rental" of the Kuwaiti's licence.[392] That being the case, it can be expected that there will be relatively few Kuwaiti claims for the assets of a business filed without the cooperation of the licence user.

Explaining its screening procedure for claims filed by permit owners, the Kuwaiti Government states that it has "sought to clarify whether the Kuwaiti business permit owner was involved in the operation of the business or cooperating with the permit user in presenting the claim. If not, the Kuwaiti claimant was only entitled to claim for the loss of income from the rental of the permit."[393] Since it appears that, as further discussed below, most "C8" claims in the First Instalment relate to the loss of assets, this policy has reduced the risk of double compensation.

Finally, the Kuwaiti Government has offered its assistance to the Commission to investigate the entitlement of claimants who may have submitted overlapping claims with regard to the same business.[394] In response to a request made by the Commission to identify Kuwaiti claims corresponding to "C8" claims in the First Instalment, no such claims were identified.[395] The Panel will continue to seek the cooperation of the Kuwaiti Government so as to limit the possibility of more than one claimant seeking compensation for the same business loss.

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[391] Id., at paras. 10, 11.

[392] Supplemental Business Report, at p. 7.

[393] Id., at p. 7.

[394] Id., at exh. 3.

[395] Letter from the Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression, dated 7 June 1994.

5) Fact of Loss and Causation

While a number of claimants describe the circumstances of their loss, either on the claim form or in a separate statement, others simply imply the fact of their loss through their submission of the claim. A comparative analysis of all claims in the First Instalment, particularly in light of the business activities represented therein, suggests that, with the principal exception of a small group of claims seeking compensation of various forms of lost business income, the claims appear to be based on the loss of tangible assets.[396] Implicitly or expressly, claimants contend that these assets, mostly consisting of equipment and inventory, have been destroyed or lost through actions on the part of Iraq.

The asserted damages, nearly all relating to businesses established in Kuwait, fit squarely into the overall pattern of business losses suffered as a result of Iraq's invasion and occupation of the country. The claims as a whole are consistent with the extensive documentation of losses compiled by United Nations-sponsored and other missions, as summarized in para. a.5), supra. The Kälin Report notes that "offices, shops, warehouses and similar places ... were left untended, because their owners had left the country or remained in hiding."[397] The Panel takes into account that this not only facilitated Iraq's actions, but also hampered the ability of claimants to document, on an individual basis, the fact of the damages resulting therefrom. In view of these circumstances, the Panel considers the existing general documentation of losses caused to businesses in Kuwait appropriate as supplemental evidence.

Taking into account the foregoing, the Panel is satisfied that the fact of the loss and its attributability to Iraq have been established for the vast majority of the cases in the First Instalment. In this connection, it is recalled that Decision 9 provides, inter alia, that "[w]here direct losses were suffered as a result of Iraq's invasion and occupation of Kuwait with respect to tangible assets, Iraq is liable for compensation. Typical actions of this kind would have been expropriation, removal, theft or destruction of particular items of property by Iraqi authorities."[398]

While claims for the loss of physical assets generally are rather straightforward in these terms, claims based on the inability of a business to collect its receivables present more complicated questions of causation. In assessing such claims, of which the First Instalment includes several, the Panel has considered, inter alia, the date on which the debt became outstanding and the results of previous efforts to obtain payment. The First Instalment contains a few other claims for lost business income, either on the basis of specific contracts that were frustrated by the invasion, or as a general approximation of lost revenue. The Panel's review of these claims has taken account of the relevant provisions of Decision 9, which confirm the eligibility in principle of such losses.

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[396] A number of covering reports accompanying consolidated claims filed by governments, as well as several national surveys of returnees from Kuwait and Iraq, further confirm the predominance of this type of loss.

[397] Kälin Report, at para. 231.

[398] Decision 9, para. 12.

6) Valuation

In determining the recommended amount of compensation, the Panel has applied both factual and legal considerations, including, in particular, the provisions of Decision 9. Obviously, the general evidentiary handicaps previously mentioned also affect the claimants' ability to prove the extent of the loss: businesses were mostly destroyed, claimants left Kuwait, and they had operated, for the most part, using another person's licence. Further problems specifically limiting the claimants' ability to present valuation evidence were caused by some of the business practices prevailing in Kuwait. Described in para. a.2), supra, the most relevant of these are the reliance on verbal agreements, the use of cash, the absence of taxes and insurance and the resulting lack of financial records.

The Panel is mindful of the fact that, as a consequence, a considerable number of the claimants in the First Instalment have relied on their completion of the claim form.[399] The Panel has found it useful to put the information thus provided in a broader context. As noted, most of the "C8" claims appear to be based on the loss of tangible assets. The First Instalment comprises claims relating to business activities that require investments in equipment, machinery and stock; (semi)skilled services, such as tailoring and electrical repairs; retail activity; and construction. The massive build-up of capital stock and inventory stock in these sectors in Kuwait has been noted previously. As observed above, very few of the businesses to which the claimed losses pertain were not physically located in Kuwait; of those that were, nearly all have been indicated not to have resumed operations.

The Panel has also found that various other data indirectly lend credibility to the overall losses asserted by the claimants. Some of this information is derived from a further analysis of the claims, such as the fact that the vast majority of "C8" claimants also seek compensation of other monetary losses, most notably for personal property on the "C4" page. Also, the evidentiary material that a number of claimants have been able to submit, in addition to the claim form, may be considered indicative of the situation of comparable businesses. The Panel has also consulted available external data, such as statistics regarding the average length of stay in Kuwait for particular categories of claimants.

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[399] See Part IV.A.2, supra.

In determining, pursuant to Decision 1, "the reasonable minimum that is appropriate under the circumstances involved," the Panel has taken into account the factors discussed earlier in this paragraph. To facilitate a standardized processing method, the Panel has thereby taken guidance from the Governing Council's suggestion to apply a more exacting standard of evidence to claims of US $20,000 and over. Review of the "C8" claims in the First Instalment indicates that, in many cases, the quality and quantity of valuation evidence tend to improve as the amount of the claim increases. In its general assessment of such evidence, the Panel has made use of a number of criteria, including the possible presence of inconsistencies or contradictions, the specificity of statements by claimants and witnesses, the efforts the claimants have undertaken to prove their case, and any explanations why such efforts may have failed[400]

Based on the considerations and applying the principles described in this section, the Panel has arrived at the recommendations for "C8" individual business losses referred to in Part V and the Annexes, infra.

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[400] For individual business claims in excess of US$ 20,000 that were not accompanied by any valuation evidence, application of the standard set out in Decision 1 has led the Panel to limit the recommended amount of compensation to US$ 20,000.

V. RECOMMENDATIONS TO THE GOVERNING COUNCIL FOR CLAIMS IN THE FIRST INSTALMENT

This Part of the report provides a listing of the claims contained in the First Instalment and, based on the findings and determinations discussed in all of the foregoing, sets out the Panel's recommendations to the Governing Council pursuant to Article 37 (e) of the Rules. These determinations and recommendations are without prejudice to the conclusions and findings of panels for other categories of claims, and the conclusions and findings of this Panel with respect to future instalments of "C" claims.

A. First Instalment Claims Recommended for Payment Reported by Country by Consolidated Claim

Pursuant to Article 37 (e) of the Rules, the Panel hereby presents its final recommendations on the claims contained in the First Instalment of category "C" claims for each country that submitted claims considered in this instalment. In this regard, the Panel has listed the various consolidated claims submissions made by a country and has provided the corresponding amount of recommended compensation payable to each of these countries. These recommendations are found in Annex II.

B. First Instalment Claims Recommended for Payment Reported by Individual Claim for Each Country

The Panel recommends the payment of compensation to individual claimants in the amounts indicated in Annex III. Each claimant country will be provided with a separate listing containing the recommendations made in respect of its claimants.

C. Transferred Claims

The claims that the Panel of Commissioners reviewing the First Instalment of category "B" claims requested the Executive Secretary to transfer to category "C" are listed in Annex IV, Table 1. The chart breaks the transferred claims down into three groupings:

1) those transferred claims for which an existing category "C" claim was already included in the First Instalment;
2) those transferred claims for which a new category "C" claim was created for purposes of being considered in the First Instalment; and
3) those transferred claims to be joined to existing category "C" claims that are scheduled to be considered in future category "C" instalments.

In addition, the single "C" claim that this Panel requests the Executive Secretary to transfer to category "E" claims, in accordance with Article 32, para. 3 of the Rules, is listed in Annex IV, Table 2.

D. Other Decisions

The Panel has considered, within the context of the First Instalment, a number of claims that were filed for the alleged losses of persons who are asserted still to be in detention in Iraq or who are otherwise "missing". No awards of compensation are recommended at this stage for such claimants. The Panel recommends that the procedures for the resolution of such claims outlined in Decision 12 should be followed. For further discussion, see Part II, section C.4.c., supra. The list of such "detained" or "missing" claimants in the First Instalment is included in Annex V.

Geneva, 2 September 1994

(Signed)

Mr. L. Yves Fortier, Q.C.
Chairman

(Signed)

Mr. Sergei N. Lebedev
Commissioner

(Signed)

Mr. Philip K.A. Amoah
Commissioner

ANNEX I

NUMBER OF CATEGORY "C" CLAIMS REPORTED AS OF 2 AUGUST 1994

Annex I

Number of Category "C" Claims Reported as of 2 August 1994[1]

Country	Number of Claims
Algeria	31
Argentina	1
Australia	222
Austria	43
Bahrain	84
Bangladesh	8,771
Belgium	13
Benin	1
Bolivia	2
Bosnia and Herzegovina	5
Brazil	14
Bulgaria	71
Cameroon	2
Canada	716
Chad	4
China	46
Croatia	37
Cyprus	16
Czech & Slovak Fed. Rep.	88
Denmark	50
Egypt	95,744
Ethiopia	3
Finland	24
France	335

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[1] The number of category "C" claims reported by country in this annex is based upon the total figures reflected in the Registry's submission ledger dated 2 August 1994.

Germany	164
Ghana	1
Greece	38
Hungary	68
Iceland	1
India	38,477
Iran	1,679
Ireland	163
Israel	250
Italy	106
Japan	148
Jordan	39,485
Kenya	4
Korea	82
Kuwait	166,511
Lebanon	3,671
Luxembourg	1
FYR Macedonia	45
Malaysia	19
Malta	4
Mauritius	38
Morocco	53
Nepal	7
Netherlands	101
New Zealand	25
Niger	2
Nigeria	47
Norway	6
Pakistan	9,966
Philippines	5,775
Poland	350

Portugal	3
Romania	3
Russian Federation	3
Senegal	17
Seychelles	1
Sierra Leone	2
Singapore	11
Slovakia	3
Slovenia	18
Somalia	1,995
South Africa	4
Spain	25
Sri Lanka	4,707
Sudan	5,396
Sweden	85
Switzerland	25
Syria	19,724
Tanzania	16
Thailand	167
Tunisia	4
Turkey	647
Uganda	6
Ukraine	1
UAE	7
United Kingdom	2,650
United States	2029
UNDP (Jerusalem)	340
UNDP (Kuwait)	1,439
UNDP (Yemen)	3
UNDP (Washington)	82
UNHCR (Geneva)	8

UNHCR (Yemen)	3
UNRWA (Vienna)	400
Yemen	2,778
Federal Republic of Yugoslavia (Serbia & Montenegro)	65
Total	416,384.00

ANNEX II

FIRST INSTALMENT CLAIMS RECOMMENDED FOR PAYMENT REPORTED BY COUNTRY BY CONSOLIDATED CLAIM

Annex II

First Instalment Claims Recommended for Payment Reported By Country By Consolidated Claim

Country	Consolidated Claim Number	Recommended Amounts US$
Australia	AU/0027/01C	1,919,706
Bahrain	BH/0009/01C	172,991
	BH/0853/08C	41,900
	Total BH	214,891
Bolivia	BO/0020/01C	53,760
Brazil	BR/0041/01C	452,071
Denmark	DK/0022/01C	1,595,504
France	FR/0854/09C	28,365
Japan	JP/0855/04C	15,750
Jordan	JO/0856/03C	28,800
Kenya	KE/0034/01C	38,014
Kuwait	KW/0007/01C	9,375,688
	KW/0014/02C	1,745,762
	KW/0857/20C	266,428
	Total KW	11,387,878
F.Y.R. of Macedonia	MK/0596/01C	80,285
Malaysia	MY/0030/01C	57,131
Nepal	NP/0002/01C	27,977
	NP/0013/02C	3,985
	Total NP	31,963

Pakistan	PK/0024/01C	17,787,653
Poland	PL/0028/01C	408,214
	PL/0049/02C	436,497
	PL/0858/10C	7,500
	Total PL	852,211
South Africa	ZA/0039/01C	95,677
United Kingdom	GB/0019/01C	5,089,079
	GB/0859/16C	240,058
	Total GB	5,329,138
United States	US/0006/01C	5,394,096
	US/0040/02C	5,029,506
	Total US	10,423,601
F.R.Y. (Serbia & Montenegro)	YU/0008/01C	661,219
Total		**51,053,616**

ANNEX III

FIRST INSTALMENT CLAIMS RECOMMENDED FOR PAYMENT REPORTED BY INDIVIDUAL CLAIM FOR EACH COUNTRY*

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* Distribution of this annex is restricted to each respective claimant country.

ANNEX IV

TRANSFERRED CLAIMS

Annex IV

Summary[*]

Claims Transferred from Category "B" to Category "C"

Table 1

Country	Joined to Existing "C" Claims Already Included in First Instalment	Newly Created "C" Claims Included in First Instalment	Joined to Existin Category "C" Clai Scheduled to be Processed in Futu Instalments
Australia	2		
Bahrain	13	9	
France		4	
Japan		5	
Jordan		6	
Kuwait		7	
Poland		1	
United Kingdom	12	23	9
United States	2		
Total	29	55	9

Claims Transferred from Category "C" to Category "E"

Table 2

Country	Number of Claims
United Kingdom	1

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[*] Distribution of the listing of the individual claimants reflected in this summary is restricted to each respectiv claimant country.

ANNEX V[*]

ELIGIBLE CLAIMS FOR WHICH NO COMPENSATION IS RECOMMENDED AT THIS STAGE

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[*] Distribution of the listing of the individual claimants reflected in this summary is restricted to each respective claimant country.

ANNEX VI

EXPERT REPORT ON MENTAL PAIN AND ANGUISH (PREPARED FOR THE UNITED NATIONS COMPENSATION COMMISSION, 14 MARCH 1993)

REPORT OF THE PANEL OF EXPERTS APPOINTED TO ASSIST THE UNITED NATIONS COMPENSATION COMMISSION IN MATTERS CONCERNING COMPENSATION FOR MENTAL PAIN AND ANGUISH

14 March 1994

United Nations Compensation Commission
Villa La Pelouse
Palais des Nations
1211 Geneve 10

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II The Panel of Psychiatric Experts

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A. Governing Council Decision 3

B. Governing Council Decision 8

C. WHO Report on the Post Traumatic Events and Mental Health Consequences Resulting From the Invasion and Occupation of Kuwait

D. Considerations Concerning Criteria for Financial Compensation To Victims Of Torture by Ole Espersen, MP and Dr. Inge Genefke

I. UN COMPENSATION COMMISSION -- BACKGROUND TO MENTAL PAIN AND ANGUISH CLAIMS

A. GENERAL INFORMATION

The United Nations Compensation Commission ("The Commission") was established by the Security Council for the processing and payment of claims against Iraq for direct losses and damages resulting from its invasion and occupation of Kuwait. The Commission consists of three separate entities:

1. The Governing Council - the principal policy making organ of the Commission. It consists of the representatives of the current member countries of the Security Council at any given time;

2. The Secretariat - composed of an Executive Secretary and the necessary staff. The Secretariat carries out functions assigned by the Governing Council and provides administrative, technical and legal support to the Commissioners;

3. The Commissioners - experts in fields such as finance, law, accountancy, insurance and environmental damage assessment. The Commissioners work in panels of three members for the review of claims and submit their recommendations to the Governing Council for approval.

In its first decision, the Commission's Governing Council determined that, in addition to claims in Categories "A" and "B" (claims for departure and serious personal injury and death, respectively), expedited priority consideration will be given to the claims of individuals for losses up to $100,000 each (Category "C" claims), resulting from Iraq's invasion and occupation of Kuwait. Payments are available to claimants under Category "C" with respect to eight separate areas of loss including: losses resulting from death or personal injury; personal property losses; loss of income, unpaid salaries or support; loss of bank accounts, stocks and other securities; real property losses; individual business losses; and damages arising from departure from Iraq or Kuwait, inability to leave Iraq or Kuwait, a decision not to return to Iraq or Kuwait, hostage taking or other illegal detention. In addition, under Category "C", claimants are eligible to claim for mental pain and anguish under seven sets of circumstances related to several of the above-referenced areas of loss.

It is anticipated that approximately 430,000 Category "C" claims will be filed with the

Commission. Due to the voluminous number of claims expected to be filed in Category "C", manual claim-by-claim processing will not be possible if the Governing Council's goal of "expedited priority consideration" is to be met. For this reason, and because there is a great similarity in many of the issues present in the claims, including those relating to mental pain and anguish, the Secretariat has adopted an approach for processing Category "C" claims that relies on computerized support, the categorization and grouping of claims and sampling techniques.

B. SAMPLING AND OTHER COMPUTER ASSISTED CLAIMS PROCESSING TECHNIQUES ADOPTED BY THE SECRETARIAT

As noted above, approximately 430,000 claims in Category "C" (Individual losses up to US$100,000) are expected to be filed with the Commission. In devising a system for evaluating these claims and for determining the amount of compensation payable to each of them, the Secretariat was faced with the prospect of developing a processing methodology that would meet the following mandates:

(1) Pursuant to Decision 1 of the Governing Council and Article 37 of the Provisional Rules for Claims Procedure, expedited procedures must be used to evaluate the large number of Category "C" claims (which are also known as "urgent" claims);

(2) Guidelines and review procedures must be adopted to implement the basic evidentiary standard for the claims in Category "C" that the evidence required will be the reasonable minimum that is appropriate under the circumstances involved; and

(3) The work on each instalment of claims presented to the Panel of Commissioners must be completed within the 120-day review period required by the Rules.

Each of these requirements influenced the design and implementation of the claims processing system developed by the Secretariat. Further, it was determined that computerized support would be necessary for analyzing, grouping and tracking such a large number of claims.

Under the Secretariat's processing system, the Category "C" claims are presented to the Panel of Commissioners in several instalments. The first few instalments will be considered as part of the "precedental phase" of the work. Subsequent instalments will be considered the "application phase".

The instalments in the precedental phase contain a relatively small number of claims, whereas the instalments in the application phase could include up to 150,000 claims each. The smaller number for the first few instalments will facilitate a more individualized review of the claims, allowing the Secretariat to identify and define the issues that appear to be relevant to the evaluation and compensation of the claims. The Commissioners, during the precedental phase, are being requested to develop "brightline" criteria that would address the legal and factual issues necessary for processing claims and determining compensation.

Claims in each instalment will be grouped according to the type or size of the claims and the similarity of legal and factual issues. From each grouping of claims, a sample of claims is selected for review by the Commissioners. The review of these sample claims will permit the

Panel to determine (i) whether application of the evaluation methodology and compensation criteria with respect to the claims leads to a fair and equitable result; (ii) whether the groupings from which the claims were taken are representative of the issues presented by the claims in each instalment; and (iii) whether a particular grouping of claims is sufficiently homogeneous, so that the decisions made with respect to the sample claims from a particular group may be applied to the non-sampled claims.

In the application instalments, sample claims taken from the groupings, as defined and approved by the Panel of Commissioners in the precedental phase, together with the compensation recommendation made with respect to those groupings, are presented to the Panel. It is the Panel's function at this stage to ensure that the groupings and compensation recommendations developed in the precedental phase are both representative of and properly applied to the claims in the application phase.

C. GOVERNING COUNCIL DECISIONS 1, 3 AND 8 AND THEIR CONSEQUENCES FOR THE "C" PANEL COMMISSIONERS

At the conclusion of the Governing Council's First Session on 2 August 1991, the Council issued Decision 1 providing criteria for the expedited processing of urgent claims. Among the few items on which consensus could not be reached was the issue of compensation for mental pain and anguish claims. The Council, in the following language of paragraph 6 of Decision 1, agreed to analyze the matter further and to carry the issue forward for future sessions:

> The Council will consider promptly, after receiving expert advice, the circumstances in which claims for mental pain and anguish may be admitted, the amounts to be awarded, and the limits to be imposed therein.

At the Council's Second Session in October 1991, the Secretariat distributed a working paper entitled "Recovery for Mental Pain and Anguish" that provided basic facts and information concerning mental pain and anguish. The paper served as a basis for discussion within the Council and ultimately led to the issuance of Decision 3 that provided formulations on both "serious personal injury" and "mental pain and anguish" and understandings as to the interpretation and application of these formulations. The text of Decision 3 is in Annex A, attached.

The crucial issue as to whether the Council would adopt fixed amounts or ceilings for compensation for mental pain and anguish and the determination of the corresponding amounts for each category of mental pain and anguish were left for future consideration.

At the Council's Third Session in November 1991, discussion focused on the alternatives of adopting ceilings or fixed amounts for compensation for mental pain and anguish. A Secretariat working paper on the subject was considered. At the conclusion of lengthy discussions, the Council ultimately chose to adopt ceilings rather than fixed amounts of compensation for mental pain and anguish. However, the issue of the ceiling amounts to be awarded for each category of mental pain and anguish was left for determination at the Council's Fourth Session.

During the Fourth Session, held in January 1992, the Council reviewed an information sheet prepared by the Secretariat on the number of potential claimants eligible for compensation for mental pain and anguish. After extensive discussions, a consensus was reached resulting in the following formulations on ceiling amounts for compensation for mental pain and anguish, as incorporated in Decision 8, attached as Annex B.

CATEGORY A:	A spouse, child or parent of the individual suffered death. US$ 15,000 ceiling per claimant; US$ 30,000 ceiling per family unit.
CATEGORY B:	The individual suffered serious personal injury involving dismemberment, permanent or temporary significant disfigurement, or permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system. US$ 15,000 ceiling for dismemberment, permanent significant disfigurement, or permanent loss of use or permanent limitation of use of a body organ, member, function or system; US$ 5,000 ceiling for temporary significant disfigurement or temporary significant loss of use or limitation of use of a body organ, member, function or system.
CATEGORY C:	The individual suffered sexual assault or aggravated assault or torture. US$ 5,000 ceiling per incident.
CATEGORY D:	The individual witnessed the intentional infliction of events described in Categories A, B or C on his or her spouse, child or parent. US$ 2,500 ceiling per claimant; US$ 5,000 ceiling per family unit.
CATEGORY E:	The individual was taken hostage or illegally detained for more than three days, or for a shorter period in circumstances indicating an imminent threat to his or her life. US$ 1,500 per claimant for being taken hostage or illegally detained for more than three days, or for a shorter period in circumstances indicating an imminent threat to life; US$ 100 per day for each day detained in Iraq or Kuwait beyond three; Ceiling of US$ 10,000 per claimant.

CATEGORY F: On account of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained, the individual was forced to hide for more than three days.

US$ 1,500 per claimant for being forced to hide for three days;

US$ 50 per day for each day forced to hide in Iraq or Kuwait beyond three;

Ceiling of US$ 5,000 per claimant.

CATEGORY G: The individual was deprived of all economic resources, such as to threaten seriously his or her survival and that of his or her spouse, children or parents, in cases where assistance from his or her Government or other sources has not been provided.

US$ 2,500 ceiling per claimant;

US$ 5,000 ceiling per family unit.

These amounts are payable cumulatively where more than one situation applies with respect to particular claimants. However, the following overall ceilings will apply to total cumulative amounts available to claimants for payments for mental pain and anguish:

US$ 30,000 ceiling per claimant;

US$ 60,000 ceiling per family unit.

In analyzing Decision 8, it can be seen that the Governing Council mandated that, for five out of the seven mental pain and anguish situations, ceilings rather than fixed amounts or flat payments should be used by Commissioners in determining the level of compensation. The expectation of the Governing Council, therefore, is that the Commissioners will apply some differentiating criteria on a case-by-case basis to five of the seven mental pain and anguish categories.

D. THE NEED FOR THE ASSISTANCE AND ADVICE OF A PANEL OF PSYCHIATRIC EXPERTS

During consultations with the Panel of Category "C" Commissioners held in January 1994, a request was made for the Secretariat to consult with its technical adviser, Dr. Norman Sartorius, to determine whether guidance for the Panel could be developed in the form of criteria that could be applied to the various types of mental pain and anguish claims put forward by claimants.

Dr. Sartorius advised the Secretariat that it would be possible to identify particular distressing circumstances further aggravating the mental pain and anguish present when the situations identified in Decision 8 appear and that information about these factors could be of assistance to the Commissioners, even with the restrictions imposed by the limited data available on the claim forms. Based on his experience in developing criteria under similar circumstances, Dr. Sartorius recommended that the work be conducted with the assistance of a panel of experts knowledgeable about mental pain and anguish and experienced in dealing with compensation matters. He also recommended that these experts, representing disciplines such as psychiatry, psychology, general medicine, war and disaster medicine as well as such situations as those encountered in Kuwait and elsewhere, should take part in a series of meetings to be held in Geneva at the Secretariat headquarters. It was accordingly determined to convene such a Panel of Experts; invitations were sent out; and the meetings took place on 3 and 4 March 1994.

II. THE PANEL OF PSYCHIATRIC EXPERTS

Dr. Norman Sartorius, M.D., M.A., D.P.M., Ph.D., FRC. Psych.

Dr. Norman Sartorius obtained his M.D. and then specialized in neurology and psychiatry. He also studied psychology and was awarded a Masters Degree and a Doctorate in psychology (Ph.D.). He carried out clinical work and research and taught at graduate and postgraduate levels at the University of Zagreb, the Institute of Psychiatry in London, the University of Geneva and elsewhere.

In 1967, Dr. Sartorius joined the World Health Organization (WHO) to serve in South-East Asia and other regions and later he assumed charge of the programme of epidemiology in social psychiatry. He conducted numerous research projects in collaboration with centres in different countries. In January 1977, he was appointed Director of the Division of Mental Health of WHO, a position that he held until his retirement in mid-1993. In June 1993 Dr. Sartorius was chosen as the President-elect of the World Psychiatric Association.

Dr. Sartorius has published some 200 articles in scientific journals, co-authored several books and edited a number of others. His main areas of specialization are psychosocial aspects of health and development, public health aspects of neurology and psychiatry, cross-cultural psychiatry, scientific methodology and science policy. He is Professor of psychiatry at the University of Zagreb and the University of Geneva and an adjunct Professor at Washington University in St. Louis, Missouri, USA. He is also visiting Professor at the University of London and the University of Beijing and a Senior Associate of the Faculty of Johns Hopkins School of Public Health in Baltimore.

Dr. Sartorius is an Honorary Fellow of the Royal College of Psychiatrists of the United Kingdom and of the Royal Australian and New Zealand College of Psychiatrists, a corresponding member of the Spanish Royal Academy of Medicine, Doctor of Medicine Honoris Causa of the University of Umea, and a Doctor of Science Honoris Causa of the University of Bath. He is a Distinguished Fellow of numerous professional associations and advisory boards.

Since October 1993, Dr. Sartorius has served as the technical adviser to the United Nations Compensation Commission on issues related to claims for mental pain and anguish.

Mrs. Liv Wisnes Haugen

Liv Wisnes Haugen, a graduate of the University of Oslo Law School, is Special Legal Adviser to the Norwegian National Insurance Administration, Department of War Pension.

From 1973 to 1992 Mrs. Haugen served as Head of the Department in charge of managing the War Pension Scheme, first as Deputy Director to 1984 and then as Assistant Director General until 1992.

In 1986 she initiated the establishment of a committee to formulate a standard for determining the amount of stress each individual or groups of individuals must have been exposed to during World War II in order to produce psychic disturbances at a later stage in life. The motivation for establishing the committee was to solve a noticeable problem regarding the Norwegian War Pension Acts of 1946 that required proof of a causal connection between the trauma or stresses incurred by Norwegians during World War II and disabilities that developed later in life.

The committee included Professor Leo Eitinger and Professor Lars Weisaeth of the University of Oslo (The Division of Disaster Psychiatry) and representatives from the Department of the Norwegian War Pension Administration. The committee, which came to be known as the Eitinger Committee, based its work on the recent medical evidence as to the knowledge and the understanding of the effects of stresses and traumas. On the basis of the Report of the Eitinger Committee - which demonstrated that severe stress can have immediate, long lasting as well as delayed serious consequences for health - the Norwegian National Insurance Administration was provided with an instrument that made it possible to decide whether an individual had developed a serious illness as a consequence of being exposed to severe stress and consequently would be eligible to a war invalid pension and other benefits.

Prof. Ahmed Okasha, M.D., F.R.C.P., FRC. Psych., D.P.M.

Dr. Ahmed Okasha is Professor and Chairman of the Department of Neuropsychiatry of the Faculty of Medicine at Ain Shams University in Cairo. He is also the Founder and Chairman of the University's Institute of Psychiatry where he has been teaching forensic psychiatry for over twenty-five years.

Since 1990, Professor Okasha has been personally involved in the treatment and rehabilitation of Egyptian and Kuwaiti patients who have suffered traumatic stress disorders from personal experiences obtained during Iraq's invasion and occupation of Kuwait. He has served as a consultant to the Egyptian Ministry of Justice in Forensic Psychiatry for the past 10 years and is a former member of the Court of High Ethics in Egypt. He is also a member of the Egyptian Organization for Human Rights.

Professor Okasha has authored 17 textbooks in the fields of psychiatry and psychology in both Arabic and English languages and has published over 140 articles in national and international journals. He currently serves as President of the Egyptian Psychiatric Association and Secretary for Sections of the World Psychiatric Association.

Dr. Inge Genefke, M.D., D.M. Sc.h.c.

Dr. Inge Genefke is the Medical Director of the Rehabilitation and Research Centre for Torture Victims (RCT) in Copenhagen and the Medical Director of the International Rehabilitation Council for Torture Victims. Dr. Genefke founded the Research Centre in 1980 and has developed it into the largest treatment centre of its kind in the world. It now employs a staff of 80 people and has treated patients from 51 countries.

Dr. Genefke has also assisted in the establishment of 55 centres around the world that have been modeled on the RCT and is currently involved in requests for assistance from 26 countries.

Dr. Genefke is a Member of the International Society for Traumatic Stress Studies, a Member of Euro Act Dis (A Concerted European Action for Coping with Disaster), a Member of the Executive Council of SOS-Torture, Geneva and a Member of the European Society for Traumatic Stress Studies. Dr. Genefke was awarded an honorary doctors degree from the University of Bologna, Italy, for her research in torture related subjects.

Dr. Lars Weisaeth, M.D., D.M.Sc.

Dr. Lars Weisaeth is Professor of Psychiatry in the Division of Disaster Psychiatry at the University of Oslo's Institute of Psychiatry. The Division of Disaster Psychiatry also serves as the psychiatric staff unit operating under the joint Norwegian Armed Forces Medical Service.

In his work with the Division of Disaster Psychiatry, Dr. Weisaeth has continued in the scientific tradition initiated by Professor Leo Eitinger and his collaborators in the 1950's with studies of the long-term effects of stress caused by war on civilian populations, such as refugees, concentration camps survivors and other victims of torture and military veteran groups. The work of Dr. Weisaeth and others in the Division of Disaster Psychiatry constitutes some of the standard literature in the field of traumatic stress. Among the recent studies initiated by Dr. Weisaeth and his colleagues are the UNIFIL PROJECT - an investigation of stress related problems arising during and after serving as UN peace-keepers, and the study of merchant sailors exposed to attacks in the Persian Gulf during the Iran-Iraq War.

Dr. Weisaeth has acted as a court appointed expert in cases of compensation for war veterans, victims of sexual assault and other victims of violence. He has carried out studies and written reports for the Norwegian Government on groups of citizens exposed to international terror.

Dr. Weisaeth is a member of a group of traumatic stress experts appointed and used by the Norwegian National Insurance Scheme in assessing compensation for war injuries. Working on the Eitinger Committee, Dr. Weisaeth helped categorize all stressful war events that took place in Norway during the invasion, occupation and liberation phases of World War II. The categorizations arrived at were used as a basis for deciding the economic compensation available to claimants for various types of health failures many years after the war.

Dr. Marcel R. Dubouloz, M.D.

Dr. Marcel Dubouloz is a Senior Medical Consultant with HDCA S.A. (Health Development Counselling and Audit) and Secretary General of the International Society of Disaster Medicine. He is the former Deputy Medical Director of the Medical Division of the International Committee of the Red Cross and the Chief
Medical Officer of the Geneva Civil Defense Medical Department for Disaster Mitigation Preparedness Programs and Psychological Care in Disaster Situations.

Dr. Dubouloz's field of professional competence involves psychological care in disaster situations, medical aspects of humanitarian rights, humanitarian assistance and aid for development, corporate health promotion and prevention and counselling and audit of medical programs. He is a member of the International Humanitarian Fact-Finding Commission created according to Article 90 of the Additional Protocols of the Geneva Conventions of August 1949, the Scientific Committee of the International Society of Disaster Medicine and is the Honorary Chief Co-Editor of the Chinese Textbook of Disaster Medicine.

Among the Fact-Finding Commissions that Dr. Dubouloz has served on as the Chief Medical Director and Senior Medical Consultant are those that visited political prisoners in South Africa; conducted surveys as to the need for international humanitarian assistance in Cambodia;

and assessed the public health needs in Mozambique, Sudan and Pakistan.

Dr. Dubouloz is currently serving as the United Nations Compensation Commission's medical adviser to the Panels of Commissioners working on claims for losses arising from serious personal injury and death (Category "B" Claims).

III CONSIDERATIONS OF THE PANEL OF EXPERTS

A. BASIC PRINCIPLES

1. The Panel members were invited to comment on claims in Categories A, B and C only. No discussion took place with regard to issues relating to claims in Categories D, E and F.

2. The Panel agreed that the work that the Secretariat has prepared and performed thus far deserved high praise. The principles and procedures developed are commendable and the quality of work demonstrated by the examples of materials that were made available was excellent.

3. The Panel members were impressed by the magnitude of the task that is before the Commission and took cognizance of the constraints that must be factored into the compensation process.

4. The Panel members felt that the work on the assessment of mental pain and anguish should be carried out considering several basic principles, which should underlie the compensation procedures.

These principles included the following:

i. The situations listed in Categories A, B, C, D and G of Decision 8 were grave and severely distressing, and there is well-established scientific evidence that all such events would cause severe mental pain and anguish;

ii. The situations described in Categories A, B, C, D and G of Decision 8 were unfortunately likely to occur again in other instances of war and similar catastrophes. The recommendations that are being made by the Panel members have therefore been put forward with an awareness that the procedures recommended for the assessment of mental pain and anguish may well be used in other compensation programmes that the United Nations and other bodies might undertake in the future;

iii. A positive aspect of the Commission's claims programme is that compensation could be provided to the victims at a relatively early date. However, one of the complications caused by this is that the urgent processing of claims would not take into account the delayed reactions that often eventually occur in many mental pain and anguish situations. The extreme traumatic situations listed in Decision 8 will, in many victims, induce a deep infliction of injury on their integrity and dignity and leave them thoroughly humiliated with long-lasting health problems. Sooner or later, a considerable proportion of victims of severe trauma will have their work capacity reduced or completely destroyed. The Panel members found it regrettable that the Commission's compensation system did not provide a possibility to consider compensation for claimants who will develop late health damage resulting in future significant losses in working capacity, quality of life and income.

iv. The Panel member were pleased that compensation for mental pain and anguish is to be provided on the basis of evidence that the situations described have actually occurred and consider this fully justified on the basis of current evidence.

v. Wherever mental or other disorders occurred subsequent to the situations described in Decision 8, a separate procedure concerning the compensation of such personal injuries should be undertaken. Similarly, the Panel fully supported the decision that the absence or presence of personal injuries should not be required in compensation procedures concerning mental pain and anguish caused by the situations described in Decision 8;

vi. Mental disorders, which are frequently consequences of being in situations such as those described in Decision 8, cause disability, suffering and increased vulnerability to a range of other mental and physical disorders. These disorders can be long lasting or permanent and many of them correspond to the definition of serious personal injury described in Decision 3;

vii. In view of differences among schools of psychiatry, it is the recommendation of the Panel members that the concept of mental disorders should be understood in terms of the 10th revision of the International Classification of Diseases, which contains detailed and generally agreed upon operational definitions of all mental disorders of concern to health and rehabilitational services;

viii. The Panel members agreed that it is reasonable to assume that the presence of certain situations for which compensation is being requested also signifies that the grounds for a claim under a different category have been created. Victims of torture, for example, also experience serious personal injury, usually of a long duration. Accordingly, claims under Categories C and D of Decision 8 should also create an implication that claims under Category B of the same decision should have been made and can be taken as justified;

ix. The Panel considered that the compensation process should not remain restricted to an act of financial restitution.

There are medical and other rehabilitation measures that have been shown to be effective in helping victims to overcome mental pain and anguish growing out of war and similar armed-conflict situations.

It is generally accepted that compensation for torture and other cruel and inhuman or degrading treatment or punishment should include: redress, i.e., the moral assistance to victims including the victims' exemption from false accusations and the just punishment of the perpetrators; financial compensation; and rehabilitation. In view of these basic principles, the Panel members recommend that any financial compensation be accompanied by appropriate statements to ensure that the victims understand that the provision of money also has the function of recognizing that they have been exposed to situations causing severe mental pain and anguish, and that the sums provided were limited by the Commission for a variety of practical, political and economic reasons rather than by the nature of experiences suffered;

x. The Panel members agreed that the maximum ceiling amounts provided in Decision 8 were generally low and that, in terms of mental pain and anguish, Category C of Decision 8 deserved ceilings at least as high as those in Categories A and B of the same Decision;

xi. The Panel members are unhappy with the valuations of various aspects of mental pain and anguish that can be implied from the compensation figures agreed upon by the Governing Council for the different Categories of Decision 8. For example, hiding for a sufficiently lengthy period of time would, on its face, appear to be equal in severity to a lasting serious personal injury. In fact, under Decision 8, compensation is being provided for hiding for a period of time as short as three days, which some experts would say would not be likely to lead to any long term or serious consequences. Nor is it as likely that hiding for such a short period of time would result in circumstances causing severe mental pain and anguish as would the events in other categories.

At the same time, the Panel found that the development of gradation of compensation amounts within the already low ceilings was often impossible due to medical reasons and the nature and often limited quantity of data available to the Commission. The Panel members, nevertheless, agreed that information about the presence of modifying factors can be usefully considered by the Commissioners and the Secretariat in the compensation process. Moreover, drawing attention to these factors also emphasizes that aggravating circumstances should be taken into account even when adequate grounds for the full compensation and other rehabilitation measures have been established. These factors are provided in Section IV of this document, along with a brief description of the evidence that guided the Panel members;

xii. The Panel members are fully aware of the fact that culture, personality and the previous personal experiences of the victims play a significant role in the occurrence of consequences of mental pain and anguish and in the severity of the experience. However, since information relevant to the assessment of these facts is usually not available in the claims and could only have been properly used in an assessment on a case-by-case basis, a decision was made to abstain from commenting on the role that these factors could have played; and

xiii. It was obvious that in some instances several of the conditions listed in Decision 8 apply to the same claim. The Panel members strongly recommend that in such instances all of the relevant Categories of mental pain and anguish should be examined and compensated. For example, the forced witnessing of the torture of a family member is psychological torture perpetuated on the claimant (Category C), which in turn is highly likely to lead to the development of a serious personal injury (Category B).

B. SPECIFIC CONSIDERATIONS

1. Category A: Death Claims:

i. The Panel members agree that the death of a family member normally leads to a period of grief for the surviving family members and exposes them to an increased risk of psychological or other illness. However, in situations described in Decision 8, the mental pain and anguish from grief is enhanced by the occurrence of other stressful factors, thereby making it more likely that the person will suffer serious injury or disease.

ii. In situations of peace, the sudden death or the unexpected death of an otherwise healthy person is particularly likely to cause mental pain and anguish among the deceased's family members. However, in view of the potential for the multiple interpretation of such facts and the absence of sufficient information about most of the situations where this occurs, the suddenness of the event has not been retained by the Panel as a specific modifying factor.

2. Category B: Serious Personal Injury Claims:

i. The Panel members agree that injuries suffered during periods of war and other armed conflict usually have serious physical and psychological dimensions, often leading to the disablement of the victim. These injuries described in Category "B" of Decision 8 reflect the severe, multidimensional nature of resulting injuries and diseases.

ii. When a claimant has not indicated whether the disease or injury suffered was permanent or temporary, the Panel is of the belief that such uncertainty should be resolved in favour of the presumption that the injury suffered was permanent. This recommendation is based on the facts that (a) most such injuries suffered during war conditions result in permanent afflictions and (b) the claim form does not indicate that this information (i.e., the distinction between permanent or temporary) is required.

3. Category C: Claims Based on Sexual Assault, Aggravated Assault or Torture

i. Torture is generally identified by reference to the following definition provided by the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which entered into force in June 1987:

> "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

ii. The main aim of torture is to destroy the personality of the torture victims. Sometimes torture is inflicted on leaders, at other times on anyone, often aiming to create anxiety and terror inside a country as a whole. In such an atmosphere of terror, the effects of torture in terms of mental pain and anguish are even further amplified.

iii. The Panel members believe that torture victims should be entitled to the maximum ceiling of compensation for, inter alia, the following reasons:

(a) Torture is deliberate. It is carefully engineered and applied using methods that have been demonstrated as causing irreparable damage to the victim and destroying an individual's personality;

(b) Being exposed to torture often puts the victim in a painful, unsolvable dilemma where all outcomes are wrong e.g., should the person give the wanted information and put others in danger? Such exposure, in addition to inflicting a sense of helplessness, often leaves the victim with a feeling of shame and guilt;

(c) Torture produces severe damage to the integrity and the dignity of the person and leaves her/him severely humiliated and with a serious personal injury. If no rehabilitation is performed, the torture victim will in future be unable to lead a normal life;

(d) The long range effects of torture are both physical and psychological. Although physical injuries may be more outwardly obvious, the psychological results of torture are often the most disabling and will always be present in a torture survivor.

(e) The victims of torture suffer from shame and guilt, often feel isolated, have impaired memories and suffer from a lack of concentration. They often experience depression, sexual problems, fatigue, irritation and constant headaches. The fact that these disorders are not recognized as being consequences of torture [by the individuals themselves and by insufficiently informed medical and social service personnel and family] creates further anxiety and problems.

(f) All of the victims' problems resulting from torture are long-lasting -- very often occurring for the rest of their lives.

iv. The Panel members are of the view that sexual assault shares a number of characteristics with torture and very often causes profound and long-lasting damages. In addition, the Panel shares the following observations:

a) Sexual assault may result in an unwanted pregnancy or the contraction of a disease, in addition to the immediate, severe and lasting psychological injuries that result. In some cultures, the inability of the family members to come to terms with the sexual assault of the victim will increase and prolong the specific physical and psychological consequences suffered by the victim;

b) Sexual assault on a female will not only cause severe personal injury in the sense of Decision 3 but also, in numerous cultures, would greatly affect the victim's prospects of marriage and induce shame and guilt on the victim and her family;

c) Male claimants may be reluctant to describe sexual assault or torture involving genital assault. Although the sexual assault of male prisoners is not uncommon, most victims are reluctant to discuss such events even with their families; and

d) Experience shows that the torture of prisoners will possibly be accompanied by a sexual assault of some kind, thus constituting two separate incidents as defined in Category C of Decision 8.

4. Category D: Claims for Being Forced to Witness the International Infliction of Events Described in Categories A, B and C on a Family Member:

i. Being forced to witness the torture of others, particularly a child, spouse or parent, is torture in itself. Victims forced to watch others being destroyed before their eyes feel totally helpless about being unable to do anything to prevent the event. Watching the death, assault or torture and hearing the screams of a family member has long-range psychological effects.

IV. RECOMMENDATIONS OF THE PANEL BASED ON AN ANALYSIS OF MODIFYING FACTORS FOR EACH CATEGORY OF DECISION 8

For each of the Categories of situations causing mental pain and anguish in Decision 8, the Panel examined sample or representative claims. The Panel is of the firm conviction that all of the circumstances listed in Decision 8 deserve compensation. The Panel, however, also identified circumstances that further aggravate the already severe mental pain and anguish caused by the situations identified in Decision 8. The "modifying factors" listed below for each Category of Decision 8 describe the circumstances identified by the Panel in order to bring them to the attention of the Commissioners for consideration in the compensation process and in situations referred to in Section III A 4 (ii).

The Panel observed that some of the claims do not contain sufficient information to establish whether modifying factors and aggravating circumstances are present. It was considered likely that such information is missing from the records of individuals who have difficulties in expressing themselves and who may also suffer other disadvantages such as economic deprivation, illiteracy or the lack of assistance in filling out the claim forms. The Panel members therefore, in each instance recommend that the records that are poorly filled in or developed be treated as deserving compensation. In the same vein, the Panel members also recommend that where the claimant has not properly filled in a particular section of the claim form but clear grounds exist for such a loss, as indicated in statements or other attached documents, such claims may nevertheless be treated as if they had been put forward.

It should also be noted that the modifying factors detailed below assume, in each case, that any relevant legal pre-conditions necessary to entitle a claimant to compensation have been met.

Category A Modifying Factors

The Panel agrees on the following "modifying factors" relevant to the compensation for mental pain and anguish for the death of a family member (includes spouse, child or parent) as provided in Category A of Decision 8:

1. At least a minimum level of compensation, such as a lump-sum of U.S.$5,000, should be awarded for the death of a family member, when no further explanation or relevant circumstances are indicated;

2. The presence of any of the following modifying factors would entitle the claimant to compensation at the ceiling amount:

    i) The claimant is less than 21 years old and loses both parents;

    ii) The claimant is less than 21 years old and loses his or her only parent; and

    iii) The death of the claimant's family member occurred as a result of cruel, inhuman or degrading treatment (e.g., death as a result of torture, execution, sexual assault or being held as a "human shield").

3. The presence of any of the following "modifying factors" would justify an increase in the amount of compensation from the minimum lump-sum amount, and the presence of more than one of these factors would entitle the claimant to compensation at the ceiling amount:

i) Multiple losses suffered by claimant (e.g., in addition to the death of the claimant's family member, the claimant suffered (another) one of the events described in Categories A, B or C of Decision 8);

ii) Intentionality of actions or events by officials, employees, members of the armed forces or other agents of Iraq leading to the death of the claimant's family member (other than those events described in 2. (iii);

iii) Degrading burial or other improper treatment of the deceased family member's body (e.g., no burial; family members not present; corpse not buried in accordance with religious practice or cultural expectations of the claimant or the deceased; enforced period of time lapses between death and burial; or improper treatment of body);

iv) Non-recovery of diseased family member's body;

v) Loss of family member who is the only child;

vi) Loss of primary family support-earner; and

vii) Lack of medical care due to the invasion and occupation of Kuwait contributed to the death of the claimant's family member.

Category B Modifying Factors

The Panel agrees on the following modifying factors relevant to the compensation for mental pain and anguish for the serious personal injury of the claimant as provided in Category B of Decision 8:

1. A claimant suffering permanent disease or injury, as defined in Category B, should receive a lump-sum payment of not less than the maximum compensation corresponding to that payable for a temporary injury under Category B;

2. The presence of any of the following modifying factors would entitle a claimant to compensation at the ceiling amount:

i) The severity of the disease or injury is "grave". A claimant's disease or injury may be considered grave if any of the following factors are present:

(a) the claimant has been made permanently or over a long period of time dependant on other individuals or services for subsistence;

(b) the diseases/injuries have disabled the claimant to such an extent that he or she is effectively prevented from performing his or her profession or previous employment; or

(c) a significant disfigurement is located on the face or genitals;

ii) There are aggravating circumstances under which the injury occurred (e.g., torture, mutilation, injury occurred under circumstances of an intense death threat, etc.).

3. The following modifying factors would justify an increase in the amount of compensation over and above the minimum lump-sum amount, and the presence of more than one of these factors would entitle the claimant to compensation at the ceiling amount:

i) The injury or disease constitutes a "new condition" caused completely by events or actions occurring due to Iraq's invasion and occupation of Kuwait, and is not merely an aggravation of a pre-existing condition;

ii) Intentionality of actions or events by officials, employees, members of the armed forces or other agents of Iraq leading to the injury of the claimant (other than those injuries resulting from events described in 2. (ii));

iii) The individual suffered burn injuries (regardless of whether they lead to significant disfigurement of the face or genitals);

iv) The individual's pre-existing medical condition was seriously aggravated because of the absence of medical care when an injury occurred; and

v) The individual suffered injuries leading to the loss of fertility.

Category C Modifying Factors

The Panel agrees on the following modifying factors relevant to the compensation of mental pain and anguish for incidents of sexual assault, aggravated assault or torture as provided in Category C of Decision 8:

1. The Panel agrees that for sexual assault and torture as specified under Category C, the mental pain and anguish suffered by a victim is so severe as to mandate the payment of the ceiling amount of compensation for each incident suffered by the claimant;

2. The term "incident" as used in relation to the acts of sexual assault and/or torture

should be defined restrictively. That is, if a claimant has indicated more than one sexual assault, or the suffering of repeated sexual assaults by the same perpetrator, each occurrence is to be viewed as a separate incident. In addition, sexual assaults committed on the same occasion by several perpetrators would constitute separate incidents.

In the case of torture, if a claimant indicates more than one occurrence of torture or repeated torture, or continuous torture over a long period of time, even if by the same perpetrator, then more than one incident has occurred. Therefore, for torture and sexual assault, where it is indicated that more than one incident has occurred but the specific number is uncertain, at least twice the ceiling (equivalent to two incidents) should be granted;

3. The physical and psychological consequences of sexual assault or torture are so severe as to also constitute an injury as defined in Category B of Decision 8 and should be compensated accordingly in addition to the compensation under Category "C";

4. An aggravated assault as described in Category C of Decision 8 that results in an injury as defined in Category B should be compensated at the ceiling amount provided under Category C;

5. An aggravated assault not resulting in such an injury as defined in Category B may receive less than the maximum amount of compensation specified in Category C, as the Commissioners may determine.

Category D Modifying Factors

The Panel agrees on the following modifying factors relevant to the compensation of mental pain and anguish under Category D of Decision 8 for witnessing the intentional infliction of events described in Categories A, B and C:

1. The Panel considers that the mental pain and anguish associated with witnessing the intentional infliction of events described in Categories A, B or C on a family member would, by its own nature, be so grave that the claimant should be compensated at the ceiling amount for each separate incident;

2. The Panel agrees that being forced to witness the intentional infliction of events described in Categories A, B or C on a family member would itself also constitute torture as defined in Category C, and accordingly would entitle the claimant to compensation pursuant to the formula developed for Category C.

Category G Modifying Factors

The Panel agrees on the following modifying factors relevant to the compensation of mental pain and anguish under Category G of Decision 8 for the deprivation of all economic resources:

1. The Panel agrees that a claimant should receive the ceiling amount if the individual has: (i) one or more dependant family members (includes spouse, child or parent) or (ii) suffered

a serious personal injury or disease of such a nature as to prevent performance or exercise of his/her profession or employment.

V. REFERENCES TO BACKGROUND DOCUMENTS

A. SOURCES OF MEDICAL RESEARCH

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ANNEX VII

EXPERTS ADVISING THE PANEL

ANNEX VII

Experts Advising the Panel

Dr. Marcel R. Dubouloz

Dr. Dubouloz is the former Deputy Medical Director of the Medical Division of the International Committee of The Red Cross. One of his current positions is that of Secretary-General of the International Society of Disaster Medicine. Dr. Dubouloz is also serving as a medical adviser to the "B" Panel of Commissioners dealing with claims for serious personal injury or death.

Dr. Alan Gladstone

Dr. Gladstone is the former Director of the Industrial Relations and Labor Administration Department of the International Labor Organisation. Presently working as an independent consultant in the fields of labor law and industrial relations, Dr. Gladstone has broad experience as a rapporteur, publicist, adviser and professor with regard to a wide range of important international labor law and industrial relations issues.

Professor Francis E. McGovern

Professor McGovern is the Francis H. Hare Professor of Torts at the University of Alabama School of Law. Visiting professor, research fellow, legal consultant and publicist, Professor McGovern specializes in the areas of product liability and mass litigation. One of the many ways in which he puts this expertise to use is as an adviser and court appointed special master in a number of important and complex mass tort actions in the United States.

Dr. Norman Sartorius

A professor lecturing at various universities, including those of Zagreb, London, Geneva, and Beijing, as well as Johns Hopkins University in Baltimore and Washington University in St. Louis, Dr. Sartorius is the former Director of the Division of Mental Health of the World Health Organization. Currently the President-elect of the World Psychiatric Association, Dr. Sartorius specializes in psychosocial aspects of health and development, public health aspects of neurology and psychiatry, cross-cultural psychiatry, scientific methodology and science policy.

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